Francis Hargrave

The Reforming Registry:

Or A

REPRESENTATION

OF

The very many *Mischeifs* and *Inconveniences* which will unavoidably happen by the *Needless*, *Chargeable*, and *Destructive* way,

OF

REGISTRIES

Proposed to be erected in every County of *ENGLAND* and *WALES*;

For the Recording of all *Deeds*, *Evidences*, *Morgages*, and whatsoever may Incumber the sale or settlement of Lands not being Copyhold.

With the small or no *Efforts* or *Atchievements* of the *Notarial Bonds* of *HOLLAND* Guarantigiated of *SPAIN*, and the *Bonds* with Clauses of *Registration* in *SCOTLAND*, in the securing of Creditors, and lessening of Charges and Contention, the greatest part thereof being written in the year 1658.

By *Fabian Philipps* of the *Middle-Temple* Esq;

Lex superflua remedia non inducit l. hæc stipulatio Divus ff. [illegible] Can.

[illegible] l. Scire ff. de B.

London, Printed for *Christopher Wilkinson* at the *Black-Boy*, against St. *Dunstans Church* in *Fleet-street*, 1673.

Philips
ag^t.
Registry — 1129. h. 13

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TO THE READER.

AS the Vices of Men, corruption of Manners, change of Customs, and a necessity of publick and just Affairs, may be a warrant or ground to adventure upon the alteration of Laws, some of them being by time, or some other way, rendred or made to be ineffectual; so ought there to be a more then ordinary care and caution in the making and introducing of new Laws, not to depart from the Laws of *God*,

rectified Nature, right Reason and Equity, or those Fundamentals and Principles; which being drawn and derived out of them, have like the main Beams or Pillers of a well built House or Castle, been the ground, original, and support of many other good Laws, which have been built upon, or proceeded from them: And therefore it was not imprudently said of *Thomas Aquinas* and *Ulpian*, *Nunquam lex debet mutari nisi maxima necessitas aut utilitas evidentissima id expostulet*. A Law is not to be changed, but upon great necessity; or where a manifest benefit is to come in the stead of it; nor the Counsel of *Cajus Cassius* to the Senate of *Rome* to be blamed, *Satius quidem interdum*

Aquin. Prim. 2. Quæst. 97. & *Ulpian*, lib. 4. Fidei Commiss.

dum aliquid à majoribus non omninò optimè conſtitutum tolerare quàm id multarum ætatum uſu receptum & comprobatum abrogare nê dum quaſi iniquum tollere volumus univerſæ Civitatis otium atquè pacem perturbare aut etiam in aliquod ſeditionis diſcrimen adducere. Tùm quod ex novis legibus quàm ex veteribus plerumque majora naſcuntur incommoda. It is better ſometimes to tolerate or endure ſomewhat, not altogether ſo well ordained by our Anceſtors, then by endeavoring to abrogate or take away as unjuſt, that which hath been approved and experimented by many ages, diſturb the quiet and peace of a Commonwealth or caſt them into Sedition; for greater inconveniences do moſt commonly come

Tacit. l. 14. Annal.

from

from new Laws, then thoſe which are old. For we know the beſt and the worſt of old, but cannot diſcern ſo clearly beforehand, either the beſt or the worſt in the new, which made the *Locrians*, that ancient and ſmall Commonwealth, ſo unwilling to employ their underſtanding, or look upon any new Propoſitions or Laws; as that they ordained by a Law, That every Propoſer ſhould come publickly with a Halter about his Neck, and adventure a hanging if he failed in his undertaking, and may ſeem to be the cauſe, that *Solomon* who is ſaid to have known more then any meer man did, before or ſince his time, and had an underſtanding heart given him by *God* the

Father

Father of all illumination and knowledge, gave us in charge not *to meddle with those which are given to change.* That the wise *Solon* perceiving the inconstancy of the *Athenians*, and their thirsting after new Laws, did swear the Magistrates and *Thesmothetes*, or such as were appointed to guard and see the Laws duly kept and put in execution, not to alter those which he had made for their good, until his return from a voyage which he intended beyond Sea; where he voluntarily absented himself for Ten years, to keep them out of the dangerous humor of change and inconstancy. And that *Augustus Cæsar*, who having the vastest Empire, and the greatest Power and Rule over Men and Nations,

Prov. 24.21.

Plutarch in vita Solonis.

had, and by an universal Peace, laid the Bloody *Bellona* to sleep, and shut up the Temple of *Janus*, had reason to have more then an ordinary skill in Government, and a care to preserve what he had gained and established, did in the Rules or Precepts which he gave for that purpose, commend the retaining and keeping of Laws, and advised *Neque quidquam in iis mutare; nam quæ eadem semper manent & si sint non nihil vitiosa utiliora tamen sunt iis quæ subinde etiam si in melius innovantur*, not to change any thing of them; for that those which have been of long continuance, though they might be something faulty, would be better then any new

Dion, lib. 53.

Laws

Laws which ſhould be made, though they ſhould be better. *Dioc. Caſſius, ibid.*

For it was never yet accompted wiſdom, upon ſmall differences or errors of Laws (when it is impoſsible to foreſee, comprehend, or prevent all that the various wickedneſs and deceits which do daily grow, and multiply in the hearts of the *ſons of men*, & which their multitudes, and variety of paſsions, accidents, deſigns, and occaſions do daily bring forth) to run the hazard of publick diſcontent and grievances which do too often aſſociate and follow the introducing of new Laws, the former and ancient Laws being never to be imagined to be an all-ſeeing, all-knowing, and all-preventing, or remedying

[illegible]
[illegible] in [illegible]
and [illegible] up the [illegible] of [illegible]
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mend [illegible]
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Lower or Dietyf, but were ever reckoned to be good and worthy to be retained, if they were but for the most part profitable, and to have more conveniencies and blessings in them, then mischeifs or inconveniencies.

Or if some of them should happen to be found to be not altogether, or in every particular so happy, are so riveted or incorporate into, and with the Fundamental or better Laws of the Body Politick; as the goodness of one may be a means to qualifie or lessen the failings of the other, or cannot well be altered, amended, or taken away without a general dislocation and confusion of the whole *Fabrick*, and in so great a disturbance, cause such an uni-

universal distemper and sickness in all the parts of it, as will far exceed the evils which shall be sought to be prevented; of which the Ancients were so sensible, as *Cato, Censorinus*, that great and learned Statesman, and severe corrector of Vice could say, *Nulla Lex satis commoda omnibus est sed id modò quæritur si majori parti & in summam prodest*, No Law is able to provide for every thing; but it is enough, if it doth for the greater part, *Ingenitum enim natura est omnibus & privatim & publicè delinquere nec ulla Lex tanti est quæ illud prohibere possit*; for saith *Thucidides*, it is so natural for all men to offend, both privately and publickly, as there is no Law which can at once meet with every

Livy, l.34.

Thucidides, lib. 3.

Thomas Aquinas, Prima 2. quæst. 56.

thing, *Et Lex humana posita multitudini hominum in qua major est numerus imperfectorum non prohibet omnia vitia.* And *Humane Laws*, being made for a multitude, the major part whereof are imperfect and apt to offend, cannot restrain all misdemeanors; For *legem semper utilem esse* was the opinion of *Bodin*, no Childe or Novice in the School of Politicks or Government, *cujus incommoda utilitatibus Leviora sunt*; that Law may always be esteemed good and profitable, whose inconveniencies are less then the good it doth.

Bodin de Repub. lib. 4.

For to change or alter Laws, because they cannot prevent or extend unto, or remedy all the evils which too many men do invent and others complain of, will

will be to vex and courſe the people out of their old and well approved Laws and Cuſtoms; and the repoſe and ſetlement of their Affairs and Eſtates, into thoſe many kinde of diſturbances which are ſeldom wanting in the Train and Attendance of new Laws; which though they undertake to do more then the Laws which they would ſupplant, do not ſeldom perform as little as a heedleſs, unſeaſonable, or ill-adminiſtred Phyſick doth in the Body-Natural, of ſome Melancholick, ill-adviſed, or over-buſie Patient; who by the vanity of not thinking or believing himſelf to be wel, when he was well, would afterwards be glad if he could be but half as well as he was before.

Which if thoſe that have ſo exceedingly buſied themſelves in the ſetting up of *Regiſtries* in every County or Shire of *England*, to Regiſter all Deeds, Contracts, and Aſſurances, had but taken into their conſideration, or well-weighed the great trouble and charges it will bring upon all men and their affairs and tranſactions, they would have rather followed the advice of the Prophet *Jeremy*, and have ſtood upon and ſurveyed the *old ways*, and examined their truth and value, before they had ſo bitterly cenſured, or eagerly deſired a baniſhment or alteration of them; and might have found reaſon to conclude, That the remedying of few or ſeldom evils, will be but

a ſmall recompence for introducing of many, the rather for that there is no viſible defect in our Law or manner of Common Aſſurances, nor was it ever complained of in all our Engliſh Parliaments, before or ſince the Third year of the Reign of King *Edward* the Third, as any grievance fit to be redreſſed; And that this their deſign is an old project of almoſt fifty years laſt paſt, invented by Maſter *Henry Miles*, a *Curſitors* Clerk; the *Quick-ſilver* in whoſe Brain ſpoiled or took away all the money in his purſe, ſince driven on by others, and to erect Offices or places of Gain, ſet to attend and trouble all the Parliaments, that were in the Reign of King *James*,

and

and the late King *Charles* his Son, but could never perſwade an Admiſsion into their more weighty affairs and buſineſs. And being at firſt onely pretended to better methodiſe and regulate the finding or ſearch for Judgments and Recogniſances, promiſcuouſly entred in ſeveral Courts and Offices which might be any Incumbrances to Purchaſers; had in the purſuit thereof, almoſt worn out the *Projectors* and their hopes, as well as their time and eſtates, until that of late years, when too many uncalled and unable, giving up their thoughts to contrive Reformations; gave them encouragement to take in more then they had formerly aimed at, and to propoſe the

the Regiſtring of all Deeds and Aſſurances, as well for ſome years paſt, as for the future; and that they being ſo Regiſtred, might have the force and effect of *Fines* and *Recoveries*; that all Bonds, Bills, and Contracts, might have the force of Statutes or Recogniſances, and be invalid, if they were not Regiſtred; and many other things which the wiſdom of *Parliament*, upon a great deal of time and debate expended therein, could not think fit to allow them, although ſome of the men of *Deſign* and *Reformation*, did ſeek to uphold and advance their Propoſitions and ſelf-ſeeking Purpoſes (which do ſeldom part company) by repreſenting and bringing for patterns, the Courſe or Way of Notarial

Bonds in *Holland*, *Guinny* in *Spain*, and other Foreign Countries, and the Registring of Deeds and Moveable Bonds in *Scotland*, wherein once for all to undeceive many who are too much in love with new inventions, and to shew them, as in a glass, the many inconveniencies which will attend the success, which they hope of it, and that other *Parliaments* and *Ages* may be no more troubled with that needless Plant of supposed *Reformation*. I have offered to the judgment of the Learned, and all other unbyassed and indifferent men, the little reason we shall have to rejoyce in such a Medicine, or to send so far for it, or desiring the experiment thereof, to prevent as much as I may the

growth or rising up again of those troublesome Inventions, though now many of them do seem to lie as dead or withering.

And am not, I hope, in the judgment of the more knowing and rational, to be censured for making so great a fight or skirmish, with a seeming dead or liveless design or Engine, or to be like the *Anaphata* who are said to fight with their own shadows, and every thing that comes near them; when as the Registring and Inrolling of Deeds, Bonds, Specialties, and Contracts in the several Counties, the erecting of new County Judicatories, and that Bonds and Bills Registred should have the force of a Statute, and the Registers Certificate upon Oath made

how much is unsatisfied, should be an Execution or a Warrant for it, have been proposed by the *Syſteme* Makers (of whom I may not deny one to be learned, and a well-wisher to publick good, and will with the rest, I hope, in due time be brought to acknowledge, that *Innovations* do not always keep their promises, but do many times more harm then good, and that known and certain benefits are not to be exchanged for failing and uncertain hopes).

Eſſay of Chriſtian Government. 170, 171.

When Mr. *Charles George Cock* in his Eſſay of *Chriſtian Government*, Printed in *Anno* 1651. would have *an Office of Inrollment at leaſt in the Head Town of every County to be of neceſsity, and a paſsing of the Wives conſent by ſealing the Deed*

of

of Sale, or releasing it before two Justices of the Peace, be as good as a Fine.

And was then so great a friend to the erecting of new Courts, as he would have *in every County, a Court erected, to appoint Guardians and Tutors to children, and determine who are mad and who are Fools, and to order the management of their Estates.*

When Mr. *Hugh Peters* in his Frame or short Model for the Law, or a short Cut (as he calls it) to a great deal of quiet, published in *An.* 1651 under the name of *H. P.* in a Book, entituled, *Good work for a good Magistrate*, and owned to be his by some of his friends, is so afraid there should not be Courts and Registries

ries enough, and so willing to Cantonize the more Ancient Courts, and make a breed of new, as he doth earnestly propose the setling of *Registries in every Parish of the Nation* (which after the rate of one in every Parish, may amount unto [illegible]) *to be kept every year, by two men chosen to that work, wherein all Alienations and Leases of Lands and Houses are to be Entred, and Copies thereof transmitted to the Country Towns.*

Good work for a good Magistrate, 28 & 29.

That all Contracts for Money or Lands, Buying or Sellings by any Writings, have a small Seal of the States on the top of it, with Three pence or Six pence paid to the States: For which, saith he, a Model is ready, and that such Papers will be of great use for more security than deeds

and

and an insensible in come to the State.

Would have Three Peace-makers Ibid. 29 & 30.
yearly chosen in every Hundred, to hear and determine all common Controversies, from whom there shall be no appeal, (which is far beyond the Dutch President) and taking no care whether they be learned, wise or able, gives the reason, (not with a peradventure, but certainly;) *For the happiness of Government will never lie upon Laws but Men; all good Men carrying good Laws* (which had need be a small Volume) *in their Bosoms.*

Wills and Testaments to be acknowledged by (perhaps he means before *the next two Justices, before whom he then thought, they may be proved without any charge, and entred* Ibid. 33.

in

in the Parish-Registers.

Ibid. 39. *And this being done,* quoth he, *it is very advisable to burn all the old Records, yea, even those in the* Tower, *the Monuments of Tyrany.*

And that Iustice may be near to all men in every City, Town and Hundred, Five or Seven able fit men to be appointed to determine all Controversies for Debts and Strifes, who in weighty Cases may advise with Advocates and Divines, but the power to determine to be as in Holland; where it is a grievance for the *Natives*, and a sport for Strangers to see Causes determined in their ordinary or lesser *Iudicatories*, by *Brewers*, *Tradesmen*, or *Burgers*, whose *Heerships* do either adventure rashly or ignorantly to determine Causes; or where they

happen

happen to be ſo conſcientious, ſend to *Utrecht*, *Amſterdam*, or the *Hague*, to Advocates with a Caſe to be adviſed upon, put ſometimes the wrong way, and many times as badly anſwered; and not ſeldom either not underſtanding how to ſtate the Caſe, or apprehending the anſwer of it, give up their Conſciences to be directed and governed by other mens Judgments; and pronounce that to be their own, which are many times other mens byaſſed directions, and proves to be the *Seminary* of almoſt endleſs Appeals, or work for men of better underſtanding.

And that there be a Court erected in London, *to hear and determine differences and quarrels betwixt* Ibid. 45.

Maſters and Men, Miſtreſſes and Maids, &c.

And another to keep him company, making himſelf an *Examiner* of the Laws of *England*, and a Judge to condemn it before it be heard, ſaith, There wants a Law to ſecure Purchaſers from being cheated by Old Intails, Sleeping Mortgages, Judgments, and Statutes.

Examen Legum Anglie, Printed in An. 1656. *cap.* 3, 4, 11, &c.

And preſenting the Law with a *Boon*, falls to finde many a doughty fault in it, as that *Magna Charta and Charta Foreſte, are no Acts of Parliament, that therein was cheifly intended the advancement of the Romiſh Power in a Tyrannical Government; that* (to omit many other cauſeleſs and groundleſs *Rabſhekeſms*) *the Law of* England,

as

as now it is in use, is a departure from the Law of God, and a taking of a Law from Heathens and Idolaters; that the Theory of the Common Law, and some Statutes now in force, contain Matters repugnant to the Law of God; that the practical part of the Law as it is now in use, is in many particulars sinful, repugnant to the Law of God, and an oppression of the people.

And supposing many mischiefs to derive their Pedigree and Dissent from the making of *Westminster Hall*, to be the *Center* of the Laws of *England*, saith, *The expences are six times more then they need to be, whereof the greater is in Mans meat and Horse meat,* (and is certain he can give us a demonstration infallible) *in the destruction of*

Horſes, which are pined, ſtarved, and ſpoiled, in and about London (enough to affright all the race or breed of them from the Buſineſs of the Laws or *London*,) *and by eſtimation as much loſs and charge yearly to the Commonwealth, as a payment of a Subſidy in former times, which was above* (as he alleadgeth, and would have us believe he is ſure enough of it) *One hundred thouſand pounds, which is above Ten pounds in every Pariſh, one with another, is confident, That the carrying of all Cauſes to* VVeſtminſter, *where every trivial, idle, and impertinent Suit of Three pence value, is from all parts of* England *brought,* (which is yet to prove) *makes in a manner all the Courts of Record in all other Cities and Towns-Corporate, with the County-Courts, Hundred-Courts,*

Cap. 13. 108.

and

and the Courts of the Mannors; and all other Courts Barons, to be diſuſed, and in a manner deſtroyed, to the prejudice both of Lords and Tenants, who are thereby much impoveriſhed; and that the Reſidence of the Laws of England *at* VVeſtminſter, *whether* (ſaith he) *they muſt go, is one* (as he ſuppoſeth) *of the greateſt oppreſſions and burdens, which the Nation groans under, and not to be parallelled in any Kingdom or Commonwealth in the whole World; juſt like the Turks travelling to* Mecca, *to viſit* Mahomets *Tomb.* Ibid. 107.

And by the VVarrant, as he takes it of ſeveral Texts or places of Scripture, *viz.* Hebron *therefore became the Inheritance of* Caleb, *the Son of* Jephunneth, *the* Kenezite, *unto this day: Becauſe that he wholly* Joſh. 14. 14, 15.

fol-

followed the Lord God of Iſreal.

And the name of Hebron *before was* Kiriath-Arba, *which* Arba *was a great man among the* Anakims; *and the Land had reſt from War.*

Joſh. 15. 8. *And the Border went up by the Valley of the Sons of* Hinnom, *unto the South-ſide of the Jebuſite, the ſame is* Jeruſalem: *And the Border went up to the Top of the Mountain that lieth before the Valley of* Hinnom, *Weſtward; which is at the end of the Valley of the Giants, Northward.*

Verſ. 9. *And the Border was drawn from the top of the Hill, unto the Fountain of the Water of* Nephtoah, *and went out to the Cities of Mount* Ephron, *and the Border was drawn to* Balaah, *which is* Kiriath-jearim.

Verſ. 19. *Who,* viz. *Achſah* anſwered her Father *Caleb, Give me a bleſſing:*

For

For thou haſt given me a South-land, give me alſo Springs of Water. And he gave her the upper Springs, and the neather Springs.

This is the inheritance of the Tribe of the Children of Judah, *according to their Families.* Verſ. 20.

So I took the evidence of the purchaſe, both that which was ſealed according to the Law and Cuſtom, and that which was open. And I gave the evidence of the purchaſe (which *Hierome* and *Grotius* underſtand to be both parts of the Deed or Evidence of the Field, which *Verſe* 10. was in *Anathoth* in the Country of *Benjamin*, in another Tribe, and a great diſtance from the Court of the Priſon in *Ieruſalem*, where the evidences were ſealed, and neither executed nor inrolled in the proper Tribe Jere. 32. 11, 12. *Grotius in Loc.*

Jere. 32. 14. Tribe or County; and (*That they might continue for many days*;) were commanded to be put into an Earthen Veſſel, which was not then certainly very fit, or taken to be a *Regiſtry*) *unto* Baruch, *the ſon of* Neriah, *the ſon of* Maaſeiah, *in the ſight of* Hanameel, *mine Uncles Son, and in the preſence of the Witneſſes that ſubſcribed the Book of the purchaſe* (Quorum nomina perſcripta erunt in Tergo inſtrumenti, *ſaith* Grotius) *before all the Iews that ſate in the Court of the Priſon.*

Ezra 2. 62. And *Ezra* 2. 62. *Theſe* (*viz.* The Children of the Prieſts, one whereof had a Wife of the Daughters of *Barzillai*, the *Gileadite*, and was called after their name) *ſought their Regiſter amongſt thoſe that were reckoned by Genealogy,*

logy, but they were not found: Therefore were they as polluted, put from the Prieſtbood.

Which gives as little proof and evidence for what they are cited, as that place of Scripture which the *Jews* and *Talmudiſts* do vex and torture, when they go about to prove from the words in *Job* 30. 4. *Viz. Who cut up Mallows by the Buſhes, and Juniper Roots for their meat.* That thoſe that talk and prate whilſt their *Schmone Eſre*, a ſpecial Prayer of theirs is repeating, are to feed on nothing but fire coals after their death; and as appoſite or pertinent, as that Doctrine of theirs to tremble and quake when they enter into their Synagogues or Schooles, becauſe שמנה עשרה

David doth in the Nine and twentieth *Psalm*, Verse the second, direct them to *Worship God in the beauty of Holiness*; or for a necessity to go to the privy and evacuate before they go to the Table to eat; because that in *Leviticus*, *Chap.* 26. 10. it is commanded *to eat old store, and bring forth the old because of the new*; or to cover in ashes, the Blood of the Fowl which they kill; because it is said in *Gen.* 24. 64. that *Rebecca* when she saw *Isaac, lighted off the Camel*.

And would amongst Eighty two other Positions, founded (as he thinketh) upon holy Writ, and serving (as he imagineth) for principal grounds of Laws amongst Christians; bestow upon us a Law, That all Estates, with

with the owners Pedigree, ſhould be inrolled in ſome convenient known place, for avoiding ſtrife and contention (which is not uſed to be much about Pedigrees,) nor are any Purchaſers in danger to be defrauded by the want of inrolling or recording them.

And when Mr. *William Sheppard*, who as he ſaith, had a ſpecial *Call* to be adviſed with about the *Regulation* of the *Law*, doth in his Introduction or firſt charge and aſſault upon it, in his Book, entituled *Englands Balm*, (much whereof hath a near alliance to the *Syſtemians*, and Men of *Reformation*, and is little more then a *Linſey Wolſey* made out of them) amongſt many Errors, Imperfections, and Deficiencies (as he is pleaſed to call them) in our Laws

Englands Balm, Printed in An. 1657. *Sect.* 1, 2, 4.

of *England*, alleage, *That some part of them are said to be repugnant to the Law of God, having in them that which tendeth to maintain and countenance Oppression and Tyranny; others said to be ensnaring and dangerous; others ridiculous, and a reproach to the Government of the Nation: some of dangerous consequence, others useless, others superfluous, that the Doctrine or Theory of the Law is tedious and voluminous, hardly to be read in many years: so obscure as it is not to be understood when it is read, and so incertain, as the Judges themselves* (who as well as *Divines*, *Tradesmen*, *Mechanicks*, and all other *Professions* amongst the *Sons of Men*, may be sometimes surely allowed a Liberty of Dissenting, or not Concurring with others in Opinion)

do

do differ one from another.

And if it were so obscure as those who are not meer strangers to it (as Mr. *Sheppard* in his attempt to *Epitomize* so much of it, as agreed with his *Palate*, and to break the *Bones* of the Law to take out that which he supposed was the *Marrow* of it, would not be thought to be) do know it is not, might have kept off the *rash* and *giddy* censures and unjustifiable Complaints of many the *Fault-finders*, until their Understandings should have been able to come up unto it, and put them in minde that they should have done better in the mean time to have believed those who know how to apprehend the *Blessings* and *Excellencies* of it.

And having contracted the Heads

Heads and Grievances, as he terms them by taking them up (in a penury and scarcity, as it seems of them, or when he serves up his own mistakes to furnish and make out as many as he can of his groundless *Accusations*) *from the Mouth and Pen of others*, as he acknowledgeth in his *Epistle* to the Parliament.

Grievances Such (amongst many others which he calls by that name) as,

Cap. 10. 130. *That the payment of Tithes do countenance Superstition.*

183. *Men* (and it is a marvel how the women escaped the Complaints or Reformation) *do take upon them to tell of Goods lost, and who shall be ones Husband.*

Sect. 3. 65, 66. *There can be no end of a Suit, till the Defendant do appear to the Action.*

The

The Defendant in most Cases will be arrested before he will appear. Sect. 3. 66.

That Marriage and Burial should belong to the Ministers Office. Cap. 10. 129.

The Common Assurances of Lands and Profits of them, by Fines, Recoveries, and Deeds, are very troublesome and dangerous. Cap. 12. 112.

There is no Security for Mens Lands or Possessions (as if there were no Feoffments, Fines, Recoveries, Statutes, Judgments, Recognisances, Barres upon Non-Claims, Grants, Covenants, Warranties, to be had or found in our Law, nor Statutes against Fraudulent Assurances, Statutes of Limitation, for bringing of Real Actions, nor Equity to help a Purchaser or just Owner of Lands, &c.)

They

Sect. 2. 115. *They can never say they are their own, but they may be molested by some former Title to, or Incumbrances* (from which the necessity of Affairs of the former Owners, cannot be alwayes restrained) *upon the Land.*

136. *That nothing is said or done publickly, and by Authority, for setling of true Religion, and the making and keeping of Peace amongst the Professors thereof.*

Cap. 11. 138. *There is no means to bring to pass a more perfect Translation of the Scriptures, the Translation now used* (which must now be disliked, because it hath not a *Systeme* or *Regulation* made of it) *being imperfect.*

That a Personal Action dies with the person so, as if a man beat, wound, cozen, or cheat another, and die; no

remedy

remedy can be had againſt his or her Executor.

That the Counties and Pariſhes are not handſomely divided. Sect. 3. 145.

There is no Law appointed for the puniſhment of a diſobedient or incorrigible Son. Sect. 7. 159.

The forbidding men the uſe of any Trade that they have not been bound Apprentice to, is a very hard Law. Cap. 13. 208.

No ſtoppage can be in caſe of Debts, mutually owing. 208.

A man can have no more of a penalty, then he is damnified. 209.

A Creditor cannot ſue (which is frequently done) *an Heir and an Executor both, for the Debt of the Dead.* 213.

Many have Lent their Money on the Publick Faith, and others Sect. 2. 140.

engaged in person to save the Nation when it was in danger, and have not been paid the Money they Lent, nor for their Service.

187. *The Lands purchased from the Commonwealth, are threatned to be resumed, and some of it was bought for very little.*

212. *A Statute is extended, and no notice is given to the Cognisor* (which might tell him how to prevent or elude it) *beforehand of it.*

Some of which are but seldom happening inconveniences, others no grievances at all, but would be grievances if the Law or Practise of it should be as he would have it: Some out of the reach of Humane Lawes, and impossible to be prevented, or would cause many inconveniencies in the endeavoring

endeavoring of it; Some, as the *payment of Tithes to Ministers*, and *Marrying and Burying by them*, would if otherwise, be impious and unchristian. That of the defects pretended to be in the Translation of the Scriptures, is not within the Survey or Jurisdiction of any Statute, or Common Law. And if there were any material faults, the Translation (besides many other hitherto well approved) of *Junius* and *Tremelius*, the latter a learned Jew, and the other a religious and learned Christian, with that which was afterwards done at the charges of King *James*, and the Labors of many learned men; and the Edition lately made by the direction and care of the *Primate* of *Armagh*, and many other learned Divines,

of the *Bible* in the Original, with the *Septuagint*, *Siriack*, *Chaldee*, *Persick*, *Samaritan*, and *Arabick* Versions, altogether Printed, may give us the hopes and assurances, That there are not Faults enough in the Translations of our Bible, to make up either a general Complaint or Grievance.

Some of his other *Grievances*, as the *not payment of Publick Faith Money, and Soldiers Wages*, the Law cannot be charged with: Others, as the *threatning to resume Lands purchased of the Commonwealth for very little*, may trouble Mr. *Sheppard* to finde a Remedy, when he shall prove such a threatning to be a grievance. Some, as *that there is no security for Mens Lands, or Possessions, and they can never say they*

be their own, is moſt untruly and ſcandalouſly alleaged, and contrary to ſome of his pretended grievances; others dreſſed up for *Grievances*, and are not; and all or moſt of them bringing along with them a Confutation of the *Law-Mender* in the onely reading of them: A wonder where and how he met with them, and a *pity* of all that ſhall believe them, to have any thing more of truth or reality, of what his *Reforming Fancy* takes them to be, then the noiſe of the *Fulling Mill* had of that which did ſo much afflict and work upon the ſpirits of the *Spaniſh* Knight Errant.

Howſoever in a ſhort *Model*, as he miſcals it, of moſt of the *Sores* of the *Nation*, which he hath troubled himſelf and the Supream Authority

Authority with, which he takes to be no leſs then hideous and remarkable, (in the framing or collection whereof, by his charges defrayed, and a *preferment*, which was wont to judge with more deliberation, he met not as to his own particular with any Grievance) having invented ſome Cures to be applied.

Sect. 6. 91. VVhich if they be no better then, *That the Judges ſhould give their Judgments without ſolemn Arguments, to prevent the lengthning of Suits by the long Arguments*, (as is untruly pretended of Judges and Lawyers.)

Sect. 3. 71. Sect. 7. 91. *That Plaintiffs themſelves may Arreſt Defendants, or ſerve and execute Proces of Execution upon them or their Eſtates.*

Sect. 2. 61. *That a Fine be paid to the Lord Protector upon all Actions*

brought

brought in the Inferior Courts, to prevent bringing of Actions in the greater: (where no Fines are now paid upon *Common* or *Perſonal Actions.*) *That Executors and Adminiſtrators may ſue and be ſued for Perſonal Wrongs, or Battery, Scandal, &c.* (Where the Actions were wont to die with thoſe that did them, or complained of it.) *That Servants may binde their Croſs Maſters to Good-Behavior.* Sect. 2. 117. *That if any Man in Poſſeſſion, whoſe Eſtate in reputation was good, be loſt for lack of Deeds to manifeſt it to him that claimeth the Eſtate be divided betwixt them upon a Suit in Equity. That Days and Iuries be appointed for hiring of Servants according to ſet Rates.* Sect. 14. 176. *That to prevent diſorders in Printing, no Book be Printed until it be firſt peruſed.* Sect. 15. 182. *And every man*

ſhall

ſhall Licence his own Book, and be an-
Sect. 8. 94. *ſwerable for it. And that to prevent chargeable proceedings in many Caſes, as in Diſtreſs for Rent: And in caſe of Accompt, Original Writs may for a cure of it, be taken away, and a Summons* (all Originals in Debt and Accompt, being now and long ago no otherwiſe) *brought inſtead thereof.* May prove to be no better Remedies, then the Sowing of Tares and Cockle amongſt the VVheat, in an expectation of leſſening, and keeping VVeeds out of it.

Many of his other Remedies not here enumerated, being but the ſame which the Law hath already preſcribed and practiſeth: And ſome of his Grievances, as the Tryal by *Ordeal* or *Purgation* in Criminal matters for want of manifeſt

proof

proof, by cauſing the party accuſed to carry in his hand a hot burning Iron, which if he could do without any hurt to his body, or if he were caſt into cold or ſcalding water, and did ſink to the bottom without any harm, was declared to be innocent, otherwiſe adjudg'd and condemned as guilty: Hath for more then a few hundreds of years paſt, been laid by and aboliſhed, and the eldeſt Mans memory which ever he met with, never troubled with. *Verſtegans Antiq.*

And in the drift and deſign of his *Balm* and *Reformation* (which lies no more hid then that of the courteous and kinde hearted *Inkeeper*, and his ſtradling Sign-poſt over the High-way, incumbring it with a brave St. *George*, killing the dread-

ful *Dragon*, which the *reckoning* is ſure to pay for) carries an intention, not onely to tear and cut into little fragments and peeces, the Juſtice of the *Superior Courts*, and ſend them to be *ſpel'd* and put together by the *Iuſtices of Peace* and their *Clerks*, in every County, and put the Law in his venerable and more to be reſpected old Age into *Querpo*, to run and lacquie upon the Errands of Ignorance.

Sect. 5. 111. & 123. *But* (that all may not be looſers by it) *to make the Lord Protector a Revenue by all Regiſtrings, and Alienation of Lands, Fines to be impoſed upon ſuch as are condemned in any Suit, or do injuſtly implead or proſecute, or do another man wrong, and force him to ſue for a remedy. And for every Suit begun* (which

(which the Fines antiently & lately paid in *Chancery* upon ſome Original Writs, did not extend unto,) *and for every one that ſhall fail in his Appeal, and a certain ſum for every Officers Staff* (perhaps he means *Conſtables*) *and Ten ſhillings to be paid by every one that ſhall be bound to the Good-Behavior.*

Hath propoſed to the *Lord Protector*, as a *Balm* for *England*, to *take away the Common Recovery altogether, and make a Fine of the ſame force with a Fine and Common Recovery, and a Fine without Proclamations with a Fine with Proclamations: So that it be after a brief note of it, tranſcribed and entred in the County Regiſtry within Twenty days after the paſsing of it.* *Englands Balm, pag.* 112, 113, 114. *Printed in An.* 1657.

That a County Regiſtry be erected

in every County; and that every man that will, may enter his Deeds there: That a Deed legally made of Lands acknowledged before a Justice of the Peace, or a Master of the Chancery, *after a short Entry thereof in the said County Registry, and a* Memorandum *thereof, and a stamp of the Office on the back of the Deed, be without any Livery of Seisin or Attornment to pass, or Bar a Fee simple, or other Estate, and of the same force with a Fine and Recovery.*

Sect. 3. 123. *That any Agreement made with or without writing, be entred there, if the parties desire it: That there be a Publick stamp put upon all that shall be there entred, and a small sum paid to the Lord Protector for it.*

That a Bond or Bill above One hundred pounds acknowledged and indorsed

dorſed in the Regiſtry of the County where the Obligor doth dwell, and Entred in the Country Regiſtry within Twenty days of the Entring into it, and have the States ſtamp upon it, be of the ſame force with a Statute for the Lands of the Cogniſor or Obligor in the ſaid County, and not elſwhere.

That there be a Pariſh Rigiſtry made in a peice of the Chancel or Tower of the Church, or in any Iſle belonging to it, or any Room to be annexed to it, to be kept by the Miniſter and Churchwardens (which would contrary to an Act of Parliament, bring the Miniſters to Temporal and Secular employments) *and there every Alienation of Lands in that particular Pariſh for longer then ſeven years, to be briefly entred with the Stamp upon it; and the Grant of any Rent Com-* Sect. 4. 125.

mon

mon or other profits out of Land in that Pariſh, or a Memorandum *of any Recogniſance, Statute, or Iudgment, which may incumber any of the Land; and to enter all Agreements betwixt any of the Pariſh, and to have the Publick ſtamp put upon it* (which would fructifie and make good ſtore of Regiſtring, and charges in the Pariſhes as well as the ſeveral Counties.) *That where no Suit is begun for Title of Land, and the one hath had quiet poſſeſſion for a year, and a colourable Title, which the Iuſtices of Peace may by a Petition examine upon Oath of Witneſſes then, that they ſettle him in peace till the Suit be ended; or if they perceive one hath a probable Title to ſettle the poſſeſſion there; or if it be doubtful on both ſides, then to Sequeſter the profits in ſafe hands, to be pre-*

Sect. 5. 126.

preſerved till the Suit be ended, for him that ſhall recover it. That wilful Perjuries in Jurors, if it be in the higher Courts, may be puniſhable by another at an Aſsiſes or Seſsions, before Judges or Juſtices of the Peace, otherwiſe then by Attaint. Sect. 3. 49.

That a Purchaſer that will have advantage by Regiſtring his Deed, muſt firſt take care when he is about it; that it be poſted up in the County Regiſtry, where all men paſs in and out; that he is about the Purchaſe of it: And that if there be any that claim any thing in it, they put in their claim within forty days, or elſe that their Eſtates be judged fraudulent. Sect. 2. 120.

That the Iuſtice of Peace, or Maſter (of *Chancery*) *that take acknowledgments of Deeds, live where the Conuſor doth dwell,* (which would be to make Ibid.

a

a Juſtice of Peace, or Maſter of *Chancery*, in every Pariſh of the Nation.)

Ibid. *That no man be bound for the making of his own Eſtate good, to enter or record his Deed, but at his pleaſure; and that he may purchaſe his Land by the old, or by this new way: But the new way of purchaſe, to have all the old advantages, and the old to be as before.*

Light Unvailed, p. 13. And when as one who ſaith he is unwilling to put his Light under a Buſhel, yet leaves no more of his name to be ſeen then *J. V.* in a ſmall Treatiſe, entituled, *Light Unvailed*, directed to the Lord Protector, 12 *December*, 165⅞. Adviſeth, *That Publick Regiſters may be ſpeedily eſtabliſhed throughout his Dominions, which will prevent Frauds*

Frauds and Contentions, and discover the Usurer that he may contribute to Taxes, who is now concealed.

All or any of which, may witness how eagerly the design of Registries are, and have of late been driven on by the *Hyricano* or *Euroclydon* of our late Reformations, and the necessity of *undeceiving* such as might be mislead or charm'd by the *Syren* Songs of so much good as is pretended by them.

Wherein it being no *Province* or purpose of mine, especially at this time, to give an Answer to those Books,

Whose manifold *Errors* and pitiful *Mistakes* do require it, least such as are *Mighty* in their own *Imaginations*, and despising

the Wisdom of the *Ancients*, do take themselves to be the *Savii Grandi*, onely Wise men, or Correctors of all that have gone before them, and should so far adde to their other mistakes, as to think themselves to be like the man of *Gath*, not to be encountred with; and in being not as yet answered, to be altogether unanswerable.

But onely to set forth the many Mischeifs and Inconveniences which will attend such Registries.

I have been the longer in the Survey of the manner of Registring Bonds in *Scotland*, and the practical part thereof; for that it is so much boasted of by that Nation, and to those that do

not

not know, or have not tryed or well conſidered it, may ſeem to be a *bonny*, ſhort, and ſafe way to the obtaining of Juſtice; and for that without ſome Repreſentation or Figure of the whole, I could not ſo well declare their great undertakings & little performance; and to the end alſo, that I might give my Country-men of *England* to underſtand what they may expect by it, and that they will do themſelves more right to put a better value, then ſome of late have done upon the Laws of *England*, to adhere more then they do to their *Inſtituta Patriæ*, Laws and Cuſtoms of their own Countrey, which not long ago they cryed up for a *Bleſsing*, could ſwear to maintain and adven-

ture all they had in the preſervation of them, and thought themſelves to be moſt miſerable, if they ſhould not enjoy that which now ſome of them (for I may not ſay either all or the greateſt part) by a ſtrange infatuation, or a deſire to employ and inrich themſelves in the diſturbance of a whole Nation, are pleaſed to call an inſupportable burthen and grievance, and with as much eagerneſs, and as little Conſcience, would do by their old and good Laws and Cuſtoms, as the *Bactrians* are ſaid to have done by their aged Parents, kill and ſet Dogs to devour them; and rather then leave an ignorant Malice unſatisfied, be as wiſe as *Herod*, who in ſeeking to deſtroy the *Redeemer*

of

of Mankinde, took it to be no bad bargain to have his own Son killed (as ſome are of opinion) amongſt the innocent Babes of *Bethlehem*.

And take heed of changing Gold for Braſs, as *Glaucus* did with *Diomedes*, or buying Pottage, will not be ſo well made or cleanly, as that of *Eſaus*; and leaving the Scottiſh Nation to their *love* and high eſteem of their own Laws which they do ſo much *adore*, keep our own, and wean our ſelves from the longing after theirs, and ſuch dangerous Novelties.

In the manage of which diſcourſe or attempt, if I be any thing acquainted with my ſelf, or may be allowed to bear witneſs.

neſs to my moſt inward thoughts, I can truly and clearly ſay, I have had no other end, but the love of *Truth*, and the Vindication of the Laws of *England*; which are now become the undeſerved reproach of thoſe that paſs by the *Gates*, the ſcorn of the *Ignorant*, the ſongs of the *Drunkards*, and the *Stephen* to be carried out and ſtoned.

And if in a throng of affairs or buſineſs, and the ſnatching of ſome broken hours or peices of time (which may ſomething excuſe the imperfections that ſhall be found herein) I have as poſſibly I may (eſpecially in the treating of Laws of other Countries) committed any Errors, which I have taken no little care and pains to avoid, by adviſing

with

with ſome of the Natives and Men learned in the Laws and Cuſtoms of *Holland*, and with ſeveral Authors which have written of them; with as to the Spaniſh, ſeveral Merchants of *Spain*, and ſome of their Authors; and for the Scotiſh, with their *Craig* and *Skene*, the onely Printed Books of their Laws and Cuſtoms, and by a diligent enquiry into their ſeveral practiſes and proceedings to whom; and the *Dutch* I have for ſome years been no very great ſtranger, I ſhall upon Advertiſement thereof, be willing to retract them, and rather deſire to have them amended, then *Regiſtred*; and the more willingly, in regard that it is God onely, who cannot erre, and man

that

that most commonly doth it. And if there ſhall be any thing uſeful in what I have ſaid, or that may do good, or be ſerviceable to the Commonwealth, whereof I am a ſmall peice or member, or that may take away or ſtill the noiſe of thoſe Water-beaters or Reformers, which in *Trajano Boccalini* were ſo troubleſome at *Parnaſſus*, I ſhall not repent me of my Labors. But if any ſhall cenſure me without a cauſe, he may do well to be firſt aſſured, That no man will do the like by him; and when it is impoſsible to pleaſe all men, and that Books and ſuch things as adventure into the Publick, have their *Fate*, and meet with diſlike or approbation according

7. Ragguali di Parnaſſo, 248.

to the Capacity, more or leſs Underſtanding, Guſt or Intereſt of the ſeveral Readers, who like Gueſts invited to a Table, *Poſcentes vario diverſa Palato*, have, as *Horace* ſaith, their liking or diſliking, and are governed by their Appetite or Fancy; I can content my ſelf with my good intentions and well meaning, as intending to do good to all, and wrong to no man: If in my endeavours to keep off the Incurſions of ſuch Novelties and Innovations, I may by giving the Alarum awake the more ſtrong and able, and give them occaſion to do better.

Errata

IN *p.* 9. *l.* 9. *dele* have, in *p.* 54. read Exemplifications, *p.* 56. r. after the ſame Term, *p.* 159. *dele* ſe in Defendant *in* 161. *l.* 2. Interſere as is before mentioned, *p.* 184 *l.* 17. *dele* againſt 188. *l.* 20. *dele* are not, 202. *l.* 1. r. diſtrayning, 23. *l.* 1. r. rather with, *Sem* to cover, 247. *l.* 24. *dele* and, 307. *l.* 7. intrrſere; 359. *l.* 12. r. *Nehemiah*, 397. *l.* 22. r. 14 *s.* 370. *l.* 14. r. mackenneth, 381. r. imitated, 428. *l. ult.* add the former not ſatisfied, 428. *l.* 26. interſere muſt be revived, 444. *l.* 20. r. Axioms.

Errata

IN p. 9. l. 9. dele have, in p. 54. read Exemplifications, p. 56. l. 1. after the same Term, p. 159. dele to Defendant in 161. l. 2. Interfere as is before mentioned, p. 184. l. 17. dele against 188. l. 20. dele are not, 202. l. 1. r. distrayning, 23. l. 1. r. rather with, Sem to cover, 247. l. 24. dele and, 307. l. 7. interfere, 379. l. 12. r. Nebitalial, 3[illegible]. l. 22. r. 145. 370. l. 14. r. mackenneth, 381. r. imitated, 4[illegible]. l. alt. add the former not satisfied, 428. l. 26. interfere must be revived, 444. l. 20. r. Axioms.

A Repreſentation *of the very many* Miſchiefs *and* Inconveniences *which will unavoidably happen, by the* Needleſs, chargeable, *and* deſtructive way *of* Regiſtries. *Propoſed to be erected in every County of* England *and* Wales, *for the Recording of all Deeds, Evidences, Bonds, Bills, and other Incumbrances.*

THE erecting of *Offices* for the *Regiſtring* of *Deeds* and *Conveyances* Indented in every County, by which any Eſtate of *Freehold* or *Inheritance* is to paſs, or be conveyed by Bargain and Sale, will be needleſs.

For that

By the Statute of 27 *Hen.* 8. *cap.* 16.

which is yet in force and unrepealed, it is already provided for.

And being ever since (now almost One hundred and fifty years ago) left to the peoples Liberty, whether they will Inroll with the *Clerk* of the *Peace* in every *County*, or in the *Chancery* and *Courts of Record* at *Westminster*.

They have so much liked of the better and more proper way of Inrolling in *Chancery*, being the *Officina Justiciæ* of the Nation, the *Repository* of most of the *Records* of it; and into which, many of the greatest concernment, are by Law and several *Acts* of *Parliament* certified, and disliked the other, as there is not one *Deed* or *Indenture* of that nature, for every Hundred which are in the *Chancery*, Inrolled in the Courts of *Upper Bench*, *Common Pleas* and *Exchequer*, by vertue of that Statute.

And not one almost in a year, Inrolled with the *Clerk* of the *Peace* of every County where the Lands do lie, either because where it was done in the proper County, it was by that Statute appointed to be done by

by the *Custos Rotulorum*, and two *Justices* of the *Peace* of the County, and the *Clerk* of the *Peace*, or two of them at the least, whereof the *Clerk* of the *Peace* to be one; who by their distances or remote Habitations, were not often or easily to be found or got together, or that the people were not so willing to trust their *Deeds* or *Evidences*, or the *Records* thereof, with the *Clerks* of the *Peace*, as they are with an Officer of Trust in *Chancery*; which being the *Registry* of the Supream Authority, is a Court always open, and kept in a known place of strength and security.

And was very long before in use and practice amongst them, for the more sure keeping and memory of their *Deeds* and *Evidences*, as *Grants* and *Releases* for Lands, and the like, amongst the *Records* of their *Kings* and *Supream Magistrates*, where they thought them safest, as may appear by the close *Rolls* in *Chancery*, ever since the raign of King *John*; and so frequently in the raign of King *Henry* the Seventh, being forty years before the making of the said Statute of 27 H. 8. as

there

there are many *Deeds* of *Bargain* and *Sale* of *Lands*, *Releases* of *Right* and *Title* to *Lands*, *Deeds* of *Gift*, or *Bargains* and *Sales* of *Goods* and *Chattels*, *Bonds* for payment of Money, *Acquittances* for Money paid, *Letters* of *Attorney*, and *Agreements* betwixt private persons, to be seen Recorded and Inrolled in the close Rolls of 8 *H.* 7. with the now usual *Form* or *Memorandums*, that the Parties acknowledging, did come into the *Chancery* and acknowledge them, *&c.*

And which was anciently held to be so much assistant, and contributing to the welbeing and preservation of Mens Deeds, by *Inrollments*, or *Records*, or *Exemplifications* made thereof, as it was in 20 *E.* 1. adjudged, That if a *Deed* be shewed in Court, or be in the custody thereof, and the *Seal* be by mischance broken off, the Court shall Inroll the *Deed* for the avail of the Party.

Cook, 2 *part. Institutes* 676. *Hil.* 20 *E.* 1. *in Banco Rot.* 100. *Somerset.*

Which is not onely an evident Demonstration of the Peoples long approving of the one, and disallowing of the other; but of the ease and benefit which they

they have had by *Inrolling* of their *Deeds* in *Chancery*, and the Courts at *London*.

And therefore every mans private *Deeds* and *Conveyances*, being to take their *original* and *principal* force from the Parties consent, and contract, and the confirmation and power which the *Laws* of *God*, *Nature*, and *Nations*, and the *Common* and *Statute Laws* of this *Nation* had allowed them, in making them to be of force and valid.

The *Act* of *Parliament* of 27 *H.* 8, 16. for Inrolling of *Deeds*, as aforesaid.

Being made in the same *Parliament* when the Statute of 27 *H.* 8. 10. for transferring of Uses into Possession was Enacted, did in the supplying of many defects in *Deeds* of *Bargain* and *Sale*, of and concerning *Freehold* and *Inheritance*, and the want of *Livery*, and *Seisin*, and *Attornment*:

Not forbid or take away the use and force of *Fines* and *Recoveries*, *Leases* with *Releases*, and *Feoffments* with *Livery* and *Seisin*, which in the extent and validity thereof, are far better *assurances*, but onely ordain, That all *Deeds*, whereby

Estates

Eſtates of *Inheritances* or *Freehold*, ſhould paſs or be altered, or changed from one to another, by way of *Bargain* and *Sale*, ſhould not be good, unleſs they ſhould be Indented and Inrolled, as that *Act* appointed, and reſtraining onely the execution and effect thereof, to the *Inrollment* within the time prefixed, did leave the people to Inroll them, where it might ſeem beſt, or their own conveniences perſwade them.

Wherefore an inforced *Regiſtry* or *Inrollment* of all ſuch *Deeds* in the proper Counties, if it ſhould keep within the bounds of that *Act*, and onely enjoyn *Inrollments* of *Deeds* by *Indenture*, where *Eſtates* of *Freehold* and *Inheritance* are to paſs by way of *Bargain* and *Sale*, will unavoidably

Produce theſe inconveniences,

Sect 1. They will be illiterately, carelesly, and ill-favoredly *Regiſtred*, and kept in the proper Counties, if either the pay or number of them ſhall not come up to the care and time, are to be beſtowed upon them,

them, or receive no other or greater Fees then are allowed by that Statute for *Inrollments*.

As it hath demonſtrably already happned in the taking and inrolling of *Statutes Merchant*, by the *Majors* of the *Staple* in all Cities, Burroughs, and good Towns, and their Officers thereunto appointed, by vertue of the *Statutes* or *Acts* of *Parliament* of *Acton Burnel* in 11 *E.*1. and the Statute *de Mercatoribus* in 13 *E.*1. which have ſince the erecting of the Statute Office at *London*, by the Statute of 23 *H.*8. 6. to attend the Lord Cheif Juſtices of the Court of *Upper Bench*, or *Common Pleas*; and in their abſence, the *Major* of the *Staple* at *Weſtminſter*, and *Recorder* of *London*: For acknowledging of Statutes for Debts have been ſo much diſuſed, and the courſe of *Statutes Merchant* which are yet in force for Merchandiſe ſo neglected, as there are above a hundred ſuch Statutes entred, to or for every one *Statute Merchant*: And whereas the *Clerk* of the *Statutes*, who was by that *Act* of *Parliament* ordered to reſide at *London*, doth fairly

and orderly enter and keep his *Books* and *Records*, and after certain years, lodg and lay them up for ſafety in the Tower of *London*; It will upon ſearch and inquiry appear, that notwithſtanding every *Statute*, whether for Merchandiſe or otherwiſe, is to be duly Inrolled by the *Clerks* or *Officers*, upon pain of forfeiting of Twenty pounds for every *Statute* not entred or Inrolled, there can be found very few of the *Rolls* or *Books* of the *Statutes Merchant* ſince 23 *H.* 8. and none at all of thoſe that were taken and Inrolled in Two hundred years before.

The difference betwixt the now *Statute Office*, which is in perpetual ſucceſſion to ſuch a capital City, and ſuperior *Courts*, as the City of *London*, and the Courts of *Upper Bench* and *Common Pleas*, and annexed as it were unto them, and the *Town Clerks* or *Majors*, or *Conſtables* of the *Staple* in the other Cities and Corporations, which do ſo often change, and are by election, as they become little more then as private perſons, giving us the reaſon why thoſe *Writings* or *Records* in their cuſtody, coming afterwards

wards through ſo many changes, to ſo many ſeveral hands as they do, can no way, as it ſeems, eſcape imbezelling. We may well enough believe, that the ſame *fate* may attend theſe Country *Regiſters*, if they ſhall not be made to be as a *Court of Record*, and in perpetual Succeſſion; and if they ſhall be made to be as ſo many *Judicatures* and *Courts of Record*, will be the cauſe of more inconveniences to the people, then the loſs and imbezeling of their *Records* or *Inrollments*, can come unto.

§. 2. The City of *London* which did uſe to Inroll ſuch *Deeds* in the *Huſtings*, and divers other Cities, Boroughs, and Towns Corporate, who did uſe to do the like, and had therefore their Rights expreſly ſaved by the *Proviſo* of that *Act* of *Anno* 27 *Henry* the Eight for *Inrollments*, and that it ſhould not extend to any *Manors*, *Lands*, *Tenements*, or *Hereditaments*, within the ſaid Cities, Boroughs, or Towns Corporate; for that they did anciently, and before the making of that *Act*, uſe to Inroll ſuch *Deeds*, will by theſe new *Regiſtries*, without any forfeiture, or

cauſe given to looſe them, be deprived of thoſe their very ancient *Rights* and *Liberties*.

§ 3. Such a conſtrained way of *Regiſtring* of *Deeds* of *Bargain* and *Sale*, which concern onely Eſtates of *Freehold* and *Inheritance*, will be very inconvenient to *Purchaſors* (who moſt commonly do reſide at or near *London*, or Trade or come thither, where the richeſt and moſt moneyed men and *Purchaſors* amongſt the people are to be found; and whoſe *Inhabitants* or near dwellers, do amount to almoſt the one half of the *Commonwealth*, and added to ſuch as upon Merchandiſe, or other occaſions do come thither, and paſs to and fro from *Ireland*, *Scotland*, and other Foreign parts, will make up in number as many as the whole people of the *Nation*,) and be not a little prejudicial to ſuch alſo as live in the *Countreys* more remote; who for any thing of value, do uſually, either come themſelves on purpoſe to *London*, or employ their *Attorneys* or *Lawyers* to procure their *Conveyances* to be there made, where the beſt of *Lawyers*, and moſt

variety

variety are moſt eaſily to be found and adviſed withal in the *Term* times) to travel or ſend to thoſe ſeveral *Counties* where the Lands do lie, to have their *Deeds* Inrolled, or for ſuch as dwell and purchaſe in remote *Counties*, either to content themſelves at home with ſuch *Counſel* or *Lawyers* which the *Country* affords, and adventure their Eſtates and Security upon it, or go on purpoſe or ſend to *London* to have their *Conveyances* made; and when they are brought home, ſend to the *Shire-Town* to finde the *Regiſter*, or ſome before whom to acknowledge the *Deed*, which may happen to be many miles diſtant from him; and for them that buy in *London*, to be at the charge to carry thoſe that do ſell and live as far as *Yorkſhire*, or other remote places, or make their bargain in *London*, for Lands lying in *Wales*, or the Weſt part of *England*, into that Country where the Lands do lie.

And ſend or travel to Inroll a *Deed* for every parcel of Land in its ſeveral *County*, the Lands therein ſometimes extending into three or four *Counties*, and many § 4.

many times into more then one, when as now one uninconvenient charge to Inroll it at *London*, will serve for Lands in all the Counties mentioned in the same Deed.

§. 5. Or upon any Suit or occasion at *London* or *Westminster* Hall, where all the Suits and Actions of concernment are, amongst many other businesses most commonly and commodiously dispatched at one and the same time by the *Nobility*, *Gentry*, *Merchants*, *Tradesmen*, and *Seamen* of the whole *Nation*, and the generality of all the people (except *Cottagers* and day *Laborers*, and the more *rustick* part of the *Yeomandry* or *Husbandmen*) and do as so many several lines drawn from the *circumference*, meet in the *Term* times or upon other occasions at *London* in one and the same *center*, to travel or send backward and forward; and perhaps to several places at great charges and distances to take Copies of *Deeds* or *Records*, where now they can have them all in one place, or within little more then a mile of it.

§. 6. The *Records* or *Registries* which

are

are to be as mens publick *evidences* when the private are loſt, will not in times of War or trouble (which moſt Nations at one time or other, do meet with) be at all or ſo ſafely kept as the Records are at *London*, being the cheif City of the *Nation*; and as the *heart* thereof, the *reſidence* of the *Supream Authority*, and ſuch a ſtrength, as is not eaſie to be forced or taken, and moſt likely to be the laſt place that ſhall ſuffer by any *Foreign* or *Inteſtine* Troubles, and which hath hitherto in moſt of our unhappy Civil Wars, for ſeveral ages preſerved the Publick Records and Evidences of the people, in the Tower of *London*, Chappel of the *Rolls* and *Treaſuries* at *Weſtminſter*; places not onely ſtrongly built with ſtone, but ſo carefully looked unto, as no Candles or Fire are permitted to be uſed in the ſame.

There being always likely to be a vaſt difference between the ſafe keeping of *Records* and *Evidences* in a City, that hath above Two hundred thouſand men, with a *Magazin*, and ſtrong hold, and more Ships and furniture for ſhipping to guard them, then

then all the Shire-Towns, Ports, and Havens of the reſt of the *Nation* can make, and furniſh out, if all were put together, and a Shire-Town which hath neither Walls, nor ſtrength, or any conſiderable number of people to defend them, there being of Fifty and two Shire-Towns, but Twenty two Cities and Walled Towns, and thoſe ſo weak and unfortified, as *Hull* onely and *Briſtol*, and ſome few excepted, every *Rebel-rout* or *Inſurrection* may plunder or deſtroy them.

The conſideration whereof did heretofore put the *Kings* and *Supream Magiſtrates* of *England*, in minde to get from time to time, as much as they could into their care and cuſtody, the *Records* of the *Iters*, *Judges*, *Circuits*, the *Hundred* and *Petty Court Rolls*, perambulations of Foreſts, being the out-lying and ſcattered Records of the *Nation*, and all that could be ſaved and got together, from the rage and troubles of former times, and the careleſs keeping of ſuch as had the charge of them, and put them into ſafe cuſtody in the Tower of *London*, or Treaſuries for Records

Records at *Weſtminſter*; and to that end, from time to time did ſend their Writs to command the bringing in of the *Records* of ſeveral *Courts* into the *Treaſury*, which was uſually done by *Indentures*, under the hands of the *Judges* that brought them in, and the *Officers* who received them, and made allowances out of the *Exchequer*, for the *Kalendring* and wel-ordering of them.

The having of which *Publick Records*, *Memorials*, and *Evidences*, as ſo many *Jewels* of ineſtimable value (wherein our *Laws* and *Liberties*, and all that we have concerning our *Eſtates*, *Lives*, *Progenitors*, and *Predeceſſors* do reſide, and are Recorded) ſo ſafely preſerved for the help and inſtruction of our ſelves and poſterities, being juſtly accounted to be a *Bleſſing*.

May teach or give us to underſtand, what an evil condition the people of *England* would have been in, if they had loſt thoſe *Cabinets* and *Jewels* of their *Eſtates* and *Memories*, or were but inforced, if they could be found again, to ſend from as far as the people of *Scotland* do now with

great trouble and expences, from all parts of their *Nation* into *England*, to the Tower of *London*, to ſearch and take Copies of the *Evidences* of their *Eſtates* or *Reconcilers* of their Controverſies, or how eaſily they might have been loſt, if in *Wat Tylers*, *Jack Cades* or *Ketts* popular Frenzies, they had been kept either in *Kent* or *Southwark*, or ſuch like open and unfortified places.

Or what had become of them, if they had lain diſperſedly in the Shire-Towns, in our late haraſſing and deſtroying *Civil Wars*.

And that by ſuch, or ſome other diſaſters, we might have had as bad an accompt of them, as are now to be had of all the *Records* and *Court Rolls* of the *Sheriffs* Turns, *County* and *Hundred* Courts, *Courts* Leet, or *Courts* Baron, and *Juſtices* in Eyre, ſince the time of *William* the Conqueror, and K. *Henry* the Second: When as none of the *Sheriffs* Turns, *County* and *Hundred* Courts, can ſhew us any *Records* of above Twenty years ſtanding, if ſo much, the proceedings therein, being

being either not entred at all, as they ſhould be, or not well kept or ordered: And the other inferior Courts not far above One hundred years, where any care hath been taken to keep them, and many times not ſo much; and for one that exceeds One hundred years, there are ten do not reach to half a hundred.

And that thoſe Records of the petty and inferior Courts of ancient times, which are now to be found in the *Treaſuries*, and amongſt the Records at *London* & *Weſtminſter*, do not amount to any more then to about the Ten thouſandth part of thoſe Country and inferior Courts Records, which are loſt and not to be found, and that thoſe that are there to be ſeen, are but as ſome pittiful ſcraps and torn pieces of what have been reſcued and taken out of the jaws of time and *Antiquity*.

Such an inforcement to *Regiſter* all ſuch *Deeds* in the proper Counties, will without any neceſſity of *War* or *Publick Safety*, take away the *Common Right* and *Liberty*, which *God* and *Nature*, and the *Laws* of the *Land*, have given to every §. 7.

man, and ſo far exceed *Monopolies*, which never yet reached to mens private Evidences, as that it will too much reſemble the King of *Spain*'s Paper, which every man in *Spain* is bound to buy at a rate, to write his *Contracts* and *Aſſurances* upon,

§ 8. Will be as a ſelling of *Juſtice* contrary to *Magna Charta*, the *Petition of Right*, and the *Liberties* of the *People*, who have of late as well as formerly fought for them, with the hazard and loſs of ſo many of their lives and eſtates, and which the *Army* have ſo often by publick and private *Remonſtrances*, called *God* and *Men* to witneſs, they would be careful to preſerve for them.

And if all *Deeds* of *Bargain* and *Sale*, *Regiſtred*, ſhall be Enacted to have the force and effect of *Fines*, with *Proclamations* and *Recoveries*, and bar as they do.

§ 9. That moſt ancient and ſtrongeſt kinde of *aſſurance*, for conveying and paſſing of Lands from one man to another, by an undoubted and irrevocable Title, known

to

to be in uſe long before, and ever ſince the *Conqueſt*; and which, without any ſtrained gueſs or conjecture, and with more probability for it, then againſt it, may to ſuch as know that our *Fines* are *Recorded* as an Agreement betwixt the Parties acknowledged in the Court of *Common Pleas*, before the *Judges*, *Et multis aliis fidelibus ibi præſentibus*, and many other good people there preſent; ſeem either to be deduced, or very much to reſemble that manner of aſſurance or conveyance which *Abraham* had of *Ephron* the *Hittite*, when he bought of him the Field of *Ephron* for a burying place for himſelf, and his wife *Sarah*; where after the Agreement or Bargain made for it, the holy *Scripture* ſaith Gen. 23. 18. it was made ſure *To Abraham for a poſſeſſion in the preſence of the children of Heth, before all that went in at the Gates of the City*, (which was their Court of Juſtice) will be taken away, to give place to that, will be a great deal dearer, and a worſe aſſurance then a *Fine*; which as to the *Indentures* of *Chyrograph* (if there were no other neceſſary foregoing Writs and Solemnities

lemnities to make it legal, and prevent counterfeiting) would amount but unto about Five or Six ſhillings.

§. 10. And (if it ſhall be endeavored to be made equal with a *Fine*, with *Proclamations*, and as ſafe from *Forgeries*, and be a bar as ſuch *Fines* are, ſhould be read and *proclaimed*, and hung up in *Tables* as *Fines* are, to be read at the *Aſſizes*, in the County where the Land lies, and be alſo hung up in *Tables* at *Weſtminſter-Hall*, and read and *proclaimed* in open *Court*, or ſome eminent place, in four Terms after the *Ingroſſing* or acknowledging of it; to the end, that ſuch as are for ever to be concluded by it, may not pretend ignorance.

§. 11. And yet if that were done, there cannot be in a *Deed* inrolled, reaſonably ſuppoſed, That *Ground* or *Reaſon*, which beſides the parties agreement and conſent, appears to be in a *Fine* or *Recovery*, *viz.* That it is done upon a *Demand*, *Suit* or *Action*, and *Interpleading* in the *Court* of *Common Pleas*, whereby the parties are for ever bound and debarred to ſay, It was not ſo

by

by the ſtrength and power of a double *Eſtoppel*, in ſo high a Court of *Record* againſt the *Record*, whereof there can be no *Averment*.

For all our former *Acts* of *Parliament* do in their Preambles, which are to be as the *Keys* to open and expound the *minde* and intention of the *Makers*, and to bring the *Act* it ſelf unto a reaſonable *Expoſition*, moſt commonly (if the *Reaſon* it ſelf were not obvious) not onely take care to expreſs and declare the *reaſon* and *cauſe*, of that which was commanded or forbidden, but made every thing that was to be done in order, to ſuch *prohibition* or *command*, to carry and bring along his *reaſon* with it, whereby to make known its *conſiſtence* and *agreeableneſs* with right *Reaſon*.

Which being the *ground*, *foundation*, and *ſupport* of all *Laws*, is ſo every where viſible in our *Laws*, (where time hath not made ſome *alteration* of that which was before the *baſis* and *reaſon* of it) as every thing therein, if not miſtaken by *ignorance*, or ſuch as make too much haſte to *cenſure* or *condemn* it, before it be heard or under-

underſtood, may upon due *examination*, (ſome ſmall or very inconſiderable defects perhaps or redundancies, which the greateſt perfections under the Sun, are to be allowed onely excepted) not onely juſtifie it ſelf, but condemn thoſe that have been too buſie in finding fault with it, it being a never failing *principle* in the *Laws*, that *Ratio Legis* is *Anima Legis*, and gives life and being to it.

§ 12. And therefore it will be a dangerous *preſident*, and of ill conſequence, that *Acts* or things in *Law*, grounded upon ſeveral *Reaſons*, and very much differing in the *Magis* and *Minus*, or extent thereof, ſhould be made to be of one and the ſame *operation* and *effect*; As that a *Grant* by Copy of *Court-Roll* ſhould paſs an eſtate of *Freehold* as well as *Copihold*, a *Fine* levied by *Tenant* in *Tail*, bar a ſtranger in *Remainder*, as immediately as it doth the *iſſue* of his *body*; or that a *General Plea* or *Iſſue*, Not guilty (the manifold inconveniences whereof, have all over *England* been ſufficiently experimented) ſhould carry and amount to as much,

as

as all other more legal *Pleas* and *Iſſues*; or that any thing of an *inferior* conſideration ſhall be of the ſame effect, as a *ſuperior* or more weighty, As that the ſign *Manual* or *Privy Seal* of the *Supream Magiſtrate*, ſhall be as binding as the *Great Seal* of *England*; that an Interlocutory ſentence ſhall be as much as a *Decree*, *Sentence*, or *Judgment*, upon a full hearing or debate; that an *acquittance* without Hand and Seal, or words of Releaſe of all *Actions*, ſhall be of the force of a *Releaſe* of all *Actions* under Hand and Seal; a *Leaſe* Parol, or by word of mouth, or a *Deed* Poll ſhould be as much as by *Indenture*; that a contract or promiſe of *Marriage*, before two witneſſes, ſhall be as much as a *Marriage* duly ſolemnized; and that things ſaid or ſpoken without *Oath*, ſhall be as much a-upon *Oath*; All which would be againſt that right *Reaſon* which do uſually accompany our *Laws*.

Women Covert, who upon levying of *Fines*, were to be examined, whether they did freely conſent, or do it, muſt now ſign and ſeal, the *Deed* to be § 13.

Inrolled as well as their Husbands, if *Dower* be to be barred, and examined as they were wont to be upon levying of *Fines*; for by *Law* they are not barred by a *Deed* Inrolled, in regard of their *Coverture.*

§ 14. *Deeds* of Bargain and Sale, covinously or deceitfully gained, by greedy and insinuating oppressors in taking advantages, and working upon mens necessities, or gotten by cheating *Gamesters* of some yong *Gentlemen*, who many times loose their Lands before they finde their wits, or some fawning *Cormorant* Citizens who gets into such witless mens Estates, upon kindly supplying their wants with a *Knavish* bargain of *Beaver-Hats*, St. *Omers* Onions, *Brown Paper*, *Pack-thred*, and such like *Trash*, or loosing Commodities, shall have no remedy or relief in *Chancery* allowed them as formerly. If that such *Deeds* inrolled shall have the force of *Fines* and *Recoveries* for that against *Fines* and *Nonclaims* and *Bars* by *Recoveries*, there can be no releif to be had in *Conscience* or *Equity*, because it might otherwise be a means

Doctor and *Student* 25. and *Lib.* 1. *cap* 1.

means to impeach and open a gap, to break into all other Mens Eſtates and Conveyances. So as that which by theſe *Propoſals* is pretended to be a way to prevent *deceipt*, will in ſuch, or the like caſe, become the greateſt *fortifier* and *defender* of it.

§. 15. Such a transferring of the power of *Fines* and *Recoveries* into *Regiſtred Deeds*, may hereafter much prejudice and terrifie ſuch, as by this new way of *Regiſtring* ſhall have deſerted the ſuing out of *Fines* and *Recoveries*. If another *Parliament*, either in this or any future ages ſhall happen to repeal, or take it away, or the Inrolments of *Deeds* or *Records* thereof, lying in ſo many diſperſed and unſafe places, ſhould happen to be loſt, and ſubject them and their Eſtates to all manner of *Claims* and *Controverſies*, which they would otherwiſe have been freed of, if they had been permitted to make uſe of the old and ſafe way of *Fines* and *Recoveries*; which in all the *Commotions* of *people* or *Petitions* of *Parliaments*, were never yet found *fault* with, or *deſired* to be taken away.

§ 16. There will be a great difference betwixt *Fines* and *Deeds* inrolled, not onely in the manner of paſſing and acknowledging of them, but in the *benefits*, *priviledges*, and *ſafety*, which as inſeparable *Concomitants* do attend *Fines*, but cannot by any *Rule* of *Right Reaſon*, be *ſimul & ſemel*, or at all put over to *Deeds* inrolled or lodged in them, for *Fines* which are to be acknowledged in Court, before two *Judges*, at the leaſt, or out of the Court, before the *Lord Chief Juſtice* of the *Court* of *Common Pleas*; and if by *Commiſſion*, which is to be ſigned by the *Lord Chancellor*, or *Lord Keeper*, and *Lord Chief Juſtice* of the Court of *Common Pleas*, or by ſome of the *Juſtices* of *Aſſiſe* or the *Circuit* where the Land lieth, ought to be directed to men of *quality* and *conſcience*, and expert in the *Laws* of the Land, one whereof is to be a Knight, (the *Writs* of *Covenant* whereupon they are grounded, paſſing the Great Seal of *England*, and ſo many ſworn *Officers* and *Judges* hands and peruſals,) and have a duplicate or double *Indenture* of *Chyrograph* ſo cut,

one

one in another, as one muſt neceſſarily diſcover the other, if there be any variance or falſification in them, and ſo many places and *Offices* recording them, cannot be *counterfeited*, or if they ſhould, will eaſily be found out; but *Deeds* ſo to be Regiſtred and Inrolled, which ſhall not be attended with ſo many cares and cautions, may eaſily be forged, counterfeited, or antidated, and bring with them more *deceits* and *incumbrances*, then they do pretend to prevent; and fall into all the inconveniencies, queſtions and debates, which *Fines* and *Recoveries*, being the grand and common *Aſſurances* of the Land: For Lands betwixt party and party, have by thoſe many Laws and Caſes, which have been adjudged to indulge and protect them, hitherto avoided and eſcaped.

The ſame power and force which are granted to *Fines*, cannot with *juſtice* or *convenience*, be given to *Deeds* inrolled againſt the Bargainor or his Heirs, or thoſe that may claim the Lands, becauſe in *Deeds* there are moſt commonly reciprocal *Covenants*, and ſome things to be performed on the § 17.

the *Bargainees* part, which may demand equity or performance, and many times no words of *Warranty* or *Releaſe*; but in a *Fine*, there is onely a *Grant*, *Releaſe*, and *Covenant*, to *Warrant* on the part of the *Cogniſor*, or he which levieth it.

§. 18. And if taken away from the people, will looſe the Lord *Protector* and his *Revenue*, Twenty or thirty thouſand pounds *per annum*; which the people having the benefit of ſuch an ancient and ſure way of *conveyance*, *Which had in* 19 E. 1. *now almoſt Four hundred years ago*, *ſo great and due reſpect given unto it*, *as it was by a Parliament held in that year*, *declared*, *That the Order of Law will not ſuffer them to be levied without a Writ Original*; *and that the cauſe of the Solemnities then uſed in Fines*, *was becauſe a Fine was ſo high a Bar*, *of ſo great force*, *and ſo ſtrong a nature in it ſelf*: And hath been ſetled, confirmed, and brought to the perfection it now enjoys, by Fourteen or fifteen *Acts* of *Parliament*, and for the greatneſs of the *Aſſurance*, and the *peace* and *quiet* which it bringeth with it, juſtly ſaid to be *Finis*

Plowdens Comment. 357, 358.

fructus

fructus exitus & effectus Legis, the end, fruit, and effect of the *Law* and a *Fine*, becauſe it doth *Finem litibus imponere* put an end to moſt Suits or Controverſies can ariſe againſt it, did never as yet, or have in all their Petitions in *Parliament*, which have been ſince or before, concerning other grievances, ſo much as complained of or grudged.

And though they had no cauſe or reaſon to complain of *Fines* and *Recoveries*, will not like ſo well as the *Propoſers*.

To be compelled to *Regiſter* all their former *Deeds* or other *Evidences*; if but for Ten or twenty years paſt, under a conſtraint or penalty, to be otherwiſe of no effect, or leſs then they would have been formerly.

For that were to make any Law which ſhould be made to ſuch a purpoſe, to be guilty of a *retroſpection*, or looking backwards in its *commands* or *prohibitions*, and the penalties enſuing thereupon, which can have no rule or pattern from the *Laws* or *Word of God*, who in the making of his moſt §. 19.

moſt righteous *Laws*, made them to binde, and look onely to the future: And when he might do what he would with his *clay*, not onely commanded thoſe *Laws* to be written very *plainly*, but was ſo willing to pardon ſins of *Ignorance*, as he ordained a Sacrifice to be made for them.

Deut. 27. 8.
Levit. 4:

And when in the forbidding the children of *Iſrael* to marry within certain degrees or nearneſs of Blood, under the penalty of death, or cutting off from the people, he had ſaid, *After the doings of the Land of Egypt, wherein ye dwelt, ſhall ye not do.* Did not either puniſh or call them to account for any former marriages contrary thereunto.

Levit. 18.

Moſes therefore who underſtood the minde of *God*, concerning thoſe Laws which he had received from him, better then all other *Legiſlators* or *Law-givers* which have been ſince, (the onely *Son* of *God* excepted) being to die, commanded them to be often read unto the people, that they might hear and obſerve them.

Joſh. 8.

The *Wedg* of *Gold*, and *Shekels* of *Silver*, and the *Babiloniſh* Garment, for which

which *Achan* was ſtoned to death, by all the people, had not been the *accurſed* things, but the lawful ſpoils of War, if the foregoing *prohibition* had not made them to be ſo. 1 Sam. 14. 15.

Nor had *Saul* ſo grievouſly, or at all offended, or been puniſhed for ſparing *Agag*, being his priſoner and captive in War, if the command or charge of God before hand had not made it to be an offence.

Which our *Engliſh Laws* have ſo much imitated. As the Act of Parliament of 36 *E.* 3. ordering all pleadings to be in *Engliſh* and Inrolled in *Latin*, and not in *French*, as they had been formerly, did neither order or intend, that all the Pleas for the years before, ſhould be entred over again, and made to be in *Latin*.

The Statute of 23 *H.* 8. *cap.* 6. for acknowledging of *Statutes* or *Recogniſances* for Debts, hath an expreſs *ſaving* for *Recogniſances taken before the Major and Conſtables of the Staple, though they did not concern Merchandiſe*; which was the evil ſought to be remedied.

The Statute of 27 *H.* 8. *cap.* 10. for transferring of uſes in poſſeſſion, making great alterations in Mens Eſtates, did after many ſavings and proviſoes, ordain, *That all lawful Wills and Teſtaments, made or to be made, before the firſt day of* May, 1536. *ſhould be of the ſame force as they were forty years before, notwithſtanding the ſaid Act; and that Actions then depending, ſhould not be abated or diſcharged, by reaſon of the executing of any Eſtate by Authority of the ſaid Act.*

The *Act* for *Inrollments* of *Deeds* of *Bargain* and *Sale* made in the ſame year, and *Parliament*, was ordained not to take effect, until after the laſt day of *July*, which ſhould be in the ſaid year.

The Statute of 5 & 6 *E.* 6. *c.* 16. forbidding the buying and ſelling of Offices, concerning Adminiſtration of *Juſtice*, doth expreſly provide, *That all Acts or things before done in the execution of ſuch Offices, ſhould be good until the parties offending, contrary to that Act, be removed out of their places, and that all Bargains and Contracts made for Offices, before the firſt day*

day of March, *then next coming, ſhould be in ſuch force and effect, as if that Act had never been made.*

And all our *Acts* of *Parliament* which were not private, or by way of pardon for Offences paſt, have until the *Act* of *Attainder* of the Earl of *Strafford*, in *Anno* 1641. Wherein there was a Proviſo, That it ſhould not afterwards be made or taken to be a precedent, been made and ordained for the future; and in all their Orders and Prohibitions, looking forward, and for the time to come, and not ſeldom, prefixing a day or time when the Act ſhould begin to take effect. And for fear leaſt any particular ſhould be damaged in their intentions, and care of the *general*, have beſides a ſaving of other mens rights, been loaded with as many *Proviſoes* to that purpoſe, as any their cares or *forecaſt* could poſſibly put them in minde of.

Wherin we may hope that our no fooliſh *Anceſtors* (though ſome of their ingrate, and leſs wiſe *Poſterity*, have been pleaſed to think them otherwiſe) did neither erre in following the opinion of Saint *Paul*,

Rom. 3. 20. Chap. 7. 7. *That by the Law is the knowledge of ſin, and we had not known ſins, but by the Law.* And the guidance of *Gods* Holy Laws and Ordinances, or that which the Light of Nature, and Laws of all other Nations (where *Juſtice* and *Reaſon* had any acquaintance) could as well as their own, inſtruct them.

Cicero Philip. 11. *Vida* lib. 2. de dignitat. Reipub. For if *Laws* which are rightly and generally defined to be *Præcepta quædam à recta ratione tracta & deducta honeſta imperantia & turpia prohibentia*, certain Rules and Precepts drawn and deduced from right *reaſon*, commanding good and honeſt things to be done, and forbidding the contrary, ſhould like *Janus* (whoſe retroſpection was but feigned, as a *loving farewel* to the year paſt) look backward as well as forward, and claw and fall upon all that was paſt, and behinde them, they would as to what is paſt, ceaſe to be Laws; and inſtead of preventing *evil*, and doing good, prove to be no better then *ſnares* to catch and ſurpriſe men in their paſt and *innocent actions*, before ſuch *Laws* came to be known, or made againſt them, make the

the time paſt, out of a time to come, and be as to what is paſt, or had been done before, as *Laws* altogether *impoſſible* to be kept, and as never known or publiſhed; and the puniſhments or evils hapning upon them, as inflicted for Offences before any Law was made, to make or declare them to be ſo; and be in the *birth* and making of them, like ſome fierce and *pitileſs winds*, broke looſe into the world, which with ſome benefit they bring along with them, in other things do at the ſame time, break, overturn, and throw down all that are near or about them, contrary to the care and love which *God* himſelf was pleaſed to ſhew to his people *Iſrael*, in the making and giving of his Laws; to whom intending to deliver his *Laws* with great *terrors* and *majeſty* in Mount *Sinai*, to the end they might hear and obey them, he did *three days* before, give them warning to ſet bounds before them, and take heed that they came not near the *Mountain*, leaſt they or their Cattle ſhould periſh or be conſumed. And contrary to the rules of all the *Intellect* and *right reaſon*, which *God* hath

Exod. 20. 12, 13.

hath hitherto bleſſed the *World* withal; and the *rule* and *reaſon* of all the *Laws* of *God*, *Nature*, and *Nations*, *Civil*, *Common*, or *Cannon*.

But if there were nothing of ill example or conſequence which might happen by this propoſed retroſpection in the making of other *Laws*.

§ 20. Such an inforced *Retroſpection* of *Deeds* and *Evidences* already paſt and executed, which could never yet deſerve to have any entertainment, or to be ſo much as heard or mentioned in *Senates*, will bring a very great charge and trouble to the people to *Regiſter* their former *Deeds* and *Evidences*, which were before as ſtrong and valid, as the *Law* and the beſt *Council* they could get, could make them; and to or from which, ſuch *Regiſtring* by *Act* of *Parliament*; without a judicial examination of the *cauſe*, and hearing of the parties concerned on both ſides, can neither adde or diminiſh.

§. 21. Or if they ſhall be pretended to be onely inforced to be *Regiſtred*, to prevent *frauds* and *inconveniences* for the future, by

by former *Bargains* or *Diſpoſitions* (which do ſo ſeldom happen to *Purchaſers* and *Money-lenders*, as there is not one in every *thouſand* which comes to any loſs or miſchances by them, will as to *Fines* and *Recoveries*, *Judgments*, *Statutes*, *Recogniſances*, and many *Deeds* which are Inrolled (without ſome of which, no Land, or almoſt Bargain of conſequence, doth paſs from one man to another;) *Actum agere*, and altogether needleſs for that, they being the greateſt incumbrances to be feared, are better *Regiſtred* already, then they are like to be by the *Propoſers*.

And for ſuch *Deeds* or *Evidences* which the owners were unwilling to be at the charge of *Inrolling*, as not being neceſſary; they are not like to bring any diſturbance or inconveniencies to *Purchaſors*, who by the *Fines* and *Recoveries* onely, which in every *purchaſe* or *mortgage* of any conſiderable value are ſure not to be omitted, may if nothing elſe were to be found upon *Record* (though very many *Deeds* of *Uſes*, *Truſts*, *Intails*, *Releaſes*, and of other ſpecial concernments, are for preſervation

vation moſt commonly to be found Inrolled) eaſily underſtand there hath been ſome former *diſpoſition* or *alteration* of the Eſtate, which is to be ſuſpected or looked after.

And for the greateſt part of them, are ſo little wanting to themſelves in their *purchaſes* or *lending* out *moneys*, as they do not onely then and at all other times, before hand, ſummon in and beſpeak all the *cares*, *diligences*, and *jealouſies*, poſſible of themſelves, and their *Counſel* learned; but make out all manner of *Inquiries* and *Scrutinies*, concerning the title and value of the Lands; call for and peruſe the *Sellers* or *Borrowers Deeds* or *Evidences*; demand and require for *Aſſurance*, *Fines*, *Recoveries*, *Feoffments*, *Warranties*, *Statutes*, *Recogniſances*, or *Judgments*, and *Counter-Securities* for performance of *Covenants*; and be ſure to have a diſcharge of ſuch *Mortgages*, *Judgments*, *Statutes*, and *Recogniſances*, which are found upon *Record*, or otherwiſe diſcovered, or to inforce the depoſiting of part of the money in their hands, to free or diſcharge *Incumbrances*

or

or *Anſwers* upon oath in *Chancery*, to diſcover them: And beſides the uſual *Covenants* of freeing and diſcharging all manner of *Incumbrances* done, or ſuffered by the Seller or Borrower, and if need be, ſome of their Anceſtors, or from whom they claim; and of making better *aſſurance* within ſo many years limited, as the *Purchaſer* or *Lender*, or their *Counſel* learned, ſhall reaſonably adviſe or require, do for the moſt part of them, like ſome grand *Seigniors*, or men of *Empire* in their Wills and Defires, upon ſuch as are to ſell or borrow to defend themſelves againſt ſome importunate *neceſſities*; and muſt needs therefore *bow* down before them, and yeeld to all that is demanded of them, rather take too much, then too little *Security*, to the great and many times impertinent coſt of the *borrower* or *ſeller*, and that with ſo great *ſeverity*, and never almoſt to be ſatisfied *curioſity*, in the *inforcing*, *obtaining*, *making*, *recording* and *inrolling* of their *aſſurances*, as it is to be wiſhed, that they would but imploy the *tenth part* of that care and deligence, to ſecure and

provide for a Blessed Eternity.

And if amidst all these their cares and industries, they happen to meet with any former Bargains or other Titles, disturbing their *Purchases* or *Mortgages*, which is very seldom.

Or that such as greedily *hunting* after cheap bargains, and to have them to be so, can be content to adventure upon cracke or *litigious titles*, or *incumbred estates*, or in a wilful haste, or *giddy confidence*, think their money or fees well saved, if they trouble not a *Lawyer* that is able to advise or make their conveyance to be safe and legal; but will either do it themselves, or imploy some *Scrivener*, *Parson* of the Parish, or yong Clerk to make it, or will not be at the charge of a *Fine*, or to stay a day or two longer to get a *Statute* or *Recognisance*, or have it done as it ought to be, do come afterwards to be *deservedly* troubled with defects or controversies in their Conveyances or Estates, which are for the most part caused or bred onely by the rashness, ignorance, negligence, or carelesness of themselves, or their *Attorneys* or *Solicitors* (those

(those few *ſuits* and *troubles* which ſometimes accompany ſuch kinde of *Purchaſers*, having for the moſt part, beſides the knavery of thoſe who ſhould have been bound faſter, no other cauſe or original, are all of them notwithſtanding, not ſeldom holpen or ſet right again by thoſe many remedies which the *Courts* of *Law* and *Equity* do afford them againſt *voluntary* or *dormant Deeds*, or ſuch as are not made upon good conſideration, old *ſleeping Statutes*, *Judgments* or *Recogniſances*, not in a long time called upon or put in Execution.

So as to conſtrain the people to ſuch a *Regiſtry* of all their Evidences, onely to ſecure *Purchaſers*, who either will or might be ſure enough to ſecure themſelves without it, (ſome defects in Title being not by any *Regiſtring*, poſſibly to be diſcovered, if the *Deeds* ſhould be over and over, and every moneth in the year *Regiſtred*) may ſeem to be as little neceſſary or pleaſing to them, as for every one in a *Town*, *County*, or *Nation*, to be ordered or compelled to take *Phiſick* every year, or

keep ſome *coſtly* or *tedious way* of *diet* to prevent *Apoplexies* or *Gangreens*, or ſome ſuch like ſeldom diſeaſes or accidents which may happen to their bodies, becauſe ſome few have died or been much troubled with it, when as *multitudes* of them are in health and do not need it; many fear it not at all, nor are likely to be in any danger of it, ſome ſo poor as they cannot be at the charge, and others not able to undergo the trouble or diſtemper of it.

And more eſpecially needleſs, when every man which doth but know any thing in our Laws, or hath ever bought or ſold Land, or ſought to recover any which hath been aliened from him, or had *Intails* which his careful Anceſtors thought to have been an unalterable proviſion for him and his poſterity, *docqued* and cut off, cannot but confeſs, That our Laws have from time to time been exceeding careful, and made it to be a great part of their *buſineſs*, to ſecure and protect *Purchaſors Bona fide*, who are already as well (if not more) provided for in their Conveyances and Aſſurances, as any *Nation* under Heaven; and as far alſo

as

as the care; no wit of man could hitherto conceive it to be neceſſary by *Feoffments*, with *Livery* and *Seiſin*, *Fines* and *Recoveries*, *Leaſes* and *Releaſes*, *Demiſe* and *Redemiſe*, *Warranties*, *Bars*, and *Non-Claims*, *Preſcriptions*, *Eſtoppels*, *Entries tolled*, *Judgments*, *Statutes* and *Recogniſances*, with *Collateral ſecurity* to perform *Covenants*, *Diſcovery* of *Incumbrances* upon *Oath*; the Statute of 27 *H* 8. for transferring of *Uſes* into *Poſſeſſion*, the *Act* of *Parliament* for *Inrolling* of *Deeds* of *Bargain* and *Sale*, an *Act* to preſerve the *Eſtate* of *Tenants* for *years*, in a *Recovery* ſuffered by one in *Reverſion*; an *Act* of *Parliament* in 2 & 3 *E.* 6. for *ſaving* and *allowing* of *Leaſes*, and other kinde of *Eſtates* not found in any *Inquiſition* or *Office* to intitle the *King*; three or four *Statutes* or *Acts* of *Parliament* againſt *fraudulent aſſurances*, or ſuch as go about to deceive men of their Debts; and another in 27 *Eliz.* ordaining a forfeiture of a years value of the Land, by ſuch as are parties or privies in the ſame; the Statute of 23 *Eliz.* for *Inrolling* of *Fines* and *Recoveries*,

verſies, to avoid *Errors* in them; three or four *Statutes* or *Acts* of *Parliament* concerning *Bankrupts*.

The Statute againſt forging of *Deeds*, the Statute of 21 *Jac.* for limitations of *Writs* of *Formedon* unto twenty years after the Title accrued; and another to quiet the Titles of all men againſt the *King*, certain caſes onely excepted, which had been in ſixty years quiet poſſeſſion; another, That the Lands of men, dying in Execution, ſhould be chargeable with their Debts; and another to make it Felony againſt ſuch as ſhould levy *Fines*, ſuffer *Recoveries*, or acknowledge *Judgments*, *Statutes*, or *Recogniſances* in other mens names, with the *Rule* of expounding *Grants*, ſtrictly againſt the *Grantors*, *Debts* to be paid before *Legacies*, and *Truſts* void as againſt *Creditors*, and many other aids and aſſiſtances not here enumerated, which the *Laws* have been at all times ready to contribute to ſuch as ſhall timely and ſeaſonably require or make uſe of them.

§ 22. But if there could be any neceſſity, ground,

ground, or colour of reaſon, to lay ſo great and needleſs a charge upon the people in general, in *Regiſtring* their former *Conveyances*, to prevent a ſeldom or far leſſer charge or loſs which might but poſſibly happen to ſome few; in particular, yet ſuch a *Regiſtring* will certainly, beſides many other evils attending it, revive and raiſe Controverſies betwixt adverſaries, or ſuch as have been the former owners or inheritors of the *Lands*, make and multiply *Suits*, which were never intended, or incourage others to project or make deſigns upon men and their Eſtates; and ſo breed and multiply *Informers*, as few mens Eſtates or Titles ſhall be free from ſuch kinde of *Vermin*, and welwiſhers to themſelves, more then to the Commonwealth: And if no other troubles ſhall break in that way, leſſen or take away the credit of thoſe, who were before reputed to have had a good Title to their Lands and Eſtates, eſpecially when the late Wars and Plundrings, have loſt or taken away a great part, if not all, of mens ancient and later *Deeds* and *Evidences*; and where

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some shall appear to be *Registred*, and others found to be wanting.

§ 24. Or if they could be found or produced, will many times be to seek for those that did seal or execute them, whereby to have them acknowledged and registred.

Or when those that should be vouched to *Warranty*, or sued in a *Warrantia Charta*, or to perform *Covenants*, shall be gone beyond Seas, or dead, or insolvent, and no witnesses to be found, that can tell or remember any thing of the contents or verification of them.

The want whereof, may be a way to raise again, when courage and necessity shall meet together, the old way (long ago laid asleep, and disused by our now more safe then formerly, keeping our *Records* and *Evidences*) of waging *Battel* in a *Writ* of *Right*, and fighting by themselves or Champions.

To which, and many more troubles and inconveniences which may be hereafter sadly experimented, there will also be too large an Addition.

If

If all *Bonds*, *Bills*, *Leaſes*, *Releaſes*, *Feoffments*, *Contracts* in writing, and whatſoever elſe may prove or happen to be *Incumbrances* upon Real and Perſonal Eſtates, muſt alſo be *Regiſtred*.

For it will as to the *Debts* and *Recogniſances*, *Fines*, *Port-Bonds*, *Obligations* (which have the force of *Statutes Staple*) and *Accompts* due to the *King* or *Supream Magiſtrate*; which by their many *Priviledges*, *Powers*, and *Severities*, may bring great incumbrances and troubles upon ſuch as ſhall deal with ſuch *Debtors* or *Accomptants*, by way of purchaſe or lending of money; and as to *Wills* and *Teſtaments* (which by diſpoſing and charging of Lands, may ſometimes *obſtruct* or *leſſen* the *Eſtates* and *Aſſurances* of *Purchaſers*) *Decrees* in *Chancery* and the *Exchequer*, *Fines* and *Recoveries*, *Judgments*, *Statutes*, and *Recogniſances*, raiſe a new and unneceſſary charge upon the people, upon a pretence onely that Incumbrances of Mens Eſtates and Lands, cannot now be ſo readily found in twelve or thir-

Coke's 3 *Reports*, Sir *Will. Herberts* Caſe. 7 *Reports*. Sir *Thomas Cecils* Caſe. And 11 *Reports*. Earl of *Devonſhire's* Caſe.

teen places in *London*, within half a mile one of another, as they hope they will be by their ſuppoſed better *Regiſtring* or *Kalendring* of them in above fifty ſeveral Shire-Towns, ſome thirty, ſome one hundred and twenty, and the leaſt twenty miles diſtant one from another.

For the Debts and Accompts due to the *Supream Magiſtrate* and their diſcharges, are already entred and *inrolled* in the Court of *Exchequer*, attended by the Clerk of the *Pipe*, and his great *Roll*, the Two *Remembrancers*, the *Tally*, and *Pell*, and *Auditors Offices*, and need not to be twice *Inrolled* and *Regiſtred*; *Wills* and *Teſtaments* are Regiſtred in Books of Parchment, fairer and better kept then any Records of the *Nation*; and for a ſmall *Fee* or *Recompence*, laid open to the view of ſuch as ſhall have occaſion to ſeek for any thing in them. *Fines*, are exactly and without any difficulty to be found in the *Fine Office*, and *Recoveries* in the Clerk of the *Warrants Office* in the Court of *Common Pleas*, the *Decrees* in *Chancery*, fairly entred by ſworn *Regiſters*, and their Clerks in Books of Orders,

Orders, and ſo *methodically* kept and *Kalendred*, as the ſearch hath nothing at all of hardſhip in it; and are (if the Clerks of the Six Clerks do but their duty) *inrolled* afterwards in *Parchment*, and carried to the Chappel of the *Rolls*, where they are moſt orderly kept, and eaſie to be found; the *Recogniſances* acknowledged in that Court, being with as little charge and labor to be found in the *Inrollment Office*; and after they are Inrolled, carried in and laid up amongſt the *Publick Records* thereof. The *Recogniſances* taken before the Juſtices of the Peace, are, or ought to be duly certified into the *Quarter Seſſions*, and entred with the Clerks of the Peace of the ſeveral Counties. *Statutes* (not *Merchant*) are orderly to be found in the *Statute Office*. *Decrees* of the *Exchequer* entred into Books, and kept by particular Clerks in the two *Remembrancers Offices*; and the *Judgments* of that Court are, as the *Judgments* are in the Courts of *Upper Bench* and *Common Pleas* at *Weſtminſter*, duly entred and recorded in their ſeveral *Rolls* or *Records* in *Parchment*; and

for ſuch as are in the Courts of *Upper Bench* and *Common Pleas*, entred upon *Poſteas* and after Verdicts, have their particular Clerks of the *Judgments*, to enter and give accompt of them. The *Searches* in all which ſeveral places, making no great charge to the people; ſome whereof are to be had for nothing, others for Four pence; ſome Eight pence, others Twelve pence, and the greateſt not exceeding Sixteen pence; which in a general ſearch, though all thoſe Twelve or Thirteen *London* Offices and places, will not altogether be ſo much as the charge of a Man and Horſe, for one days journey, for a ſingle ſearch to a *Regiſtry*, if not much above twenty miles diſtance.

But if there could be any reaſon to *enter* and *inrol* them over again, and put them into Fifty two ſeveral places and diſtances, ſo far of from one another, or to perſwade or enjoyn people not to look for them, where with moſt eaſe and leſs charge they are to be found.

§ 25. The Clerks or Regiſters of ſuch new erected Offices (if either they or their buſi-

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neſs could be for the good of the *Commonwealth*) will be too much exempted, and at liberty, if they ſhall not according to the *Law* and *Rule* of *Right Reaſon*, hitherto obſerved, be conſtituted and made to be under the *Survey* or *Control*, and *ſworn* as Officers or Clerks of ſome of the Superior Courts; As the Clerks of the *Tower Records*, and *Chappel* of the *Rolls* are of the Maſter of the *Rolls*, the *Cuſtos Brevium* of the *Upper Bench*; of the Judges of that Court, the *Cuſtos Brevium*; and all other Officers of the Court of *Common Pleas* are; of their Judges, the Two *Remembrancers* and Clerks of the *Pipe*, by *Act* of *Parliament*; and the Chamberlain of the *Exchequer*, and the Keeper of *Doomſday* Book, and divers ancient and miſcellaneous Records of great value are of the *Lord Treaſurer*, *Chancelor*, and *Barons* of the *Exchequer*.

For if they ſhall not be incorporate and ſubordinate to ſome one, or every of theſe Superior Courts, as to ſeveral reſpects, whereby with leſs charge to the people, or trouble to thoſe Courts, to collect and make

make up their *Regiſters* out of the Records, if there could be any need of it; as the Clerk of the *Pipe* and *Exchequer Remembrancers* are order'd by *Act* of *Parliament*, to do one out of anothers *Rolls* or *Office*, the *Decrees* and *Recogniſances* in the *Chancery* and *Exchequer*, and the *Judgments* in the Courts of *Upper Bench* and *Common Pleas* at *Weſtminſter*, muſt by this new and unpractiſed way of *Regiſters*, be certified out of thoſe Superior and Grand Courts of the *Nation*, to thoſe who are neither Courts of *Record*, nor intend to be in any *ſubordination* to them, with a great deal of unneceſſary charge and trouble to the people, to procure *Exemplications* under the Seal of the ſaid Courts, or *authentick* and *ſworn* Copies of Records of them (the latter whereof being to be delivered by the Plaintiffs, or thoſe that obtained the Judgments, or their *Attorneys*, or any other intereſſed therein, may produce many inconveniences) and ſend them to and from all parts of the *Nation*, one as far as from *Kent* to *Weſtcheſter*, and another from *Oxford* to *York* or *Lincoln*; and upon three

ſeveral

ſeveral Judgments had at *London*, as it many times happens upon one Bond for payment of money, wherein three or four ſeveral men of three ſeveral Additions or Reſidence, do ſtand bound to ſend into *Wales*, *Northumberland*, *Devonſhire*, *Cornwal*, or the like, to have them entred in the proper *Regiſtries*; where alſo Judgments in perſonal and tranſitory Actions againſt men, who have neither Lands or any fixed Reſidence in one County, more then in another, and write themſelves of ſeveral places, will be ſo much the more difficult in the ſearch, and finding them; As Fifty two Shire Towns are moſt commonly farther diſtant from thoſe that muſt go unto them, and at all times not a little remote one from another, and not ſo eaſie or expedite a ſearch, as it would be with the *Regiſters*, or at the *Chappel* of the *Rolls*, in *Chancery* the *Prothonotary* of the Court of *Upper Bench*, the three *Prothonotaries* of the Court of *Common Pleas*, and in the *Pipe* and Two *Remembrancers* Offices in the *Exchequer*, the Office for *Probate of Wills*, the *Fine* Office, and Clerk of the

Warrants,

Warrants and the *Statute* Office, who are all of them conſtantly to be found moſt part of the *Vacation*, and all the *Term* times, within leſs then a mile of one another at *London*, without ſending any one on purpoſe thither.

§ 26. Or if the Plaintiffs or the Superior Courts, whoſe *Judgments* and *Decrees* once entred and inrolled, cannot by the *Judges* themſelves be ſtayed or arreſted, without a *Writ of Error* in Courts of *Common Law*, and a *Bill* of *Review* upon a *Decree* in *Chancery*, and are ſworn not to deny any man Common Right, ſhall be ordered to tranſmit or certifie Copies of ſuch *Judgments* or *Decrees*, with an *Injunction*, That they ſhall not be otherwiſe valid, or put in execution, will not onely be unparalelled and unpreſidented, and againſt the Oath of the *Judges*, and Common Right and Juſtice; but render thoſe ancient and ſuperior Courts to be but as half Courts of *Record*, and their Judgments but Interlocutory; or as Offices onely of *Inqueſt* and *Inquiry*, and the *Regiſtries* to be in effect and power, as their Superiors.

Mean

Mean while the people having obtained any *Judgments* or *Decrees* in thoſe Courts, concerning Lands or Perſonal Eſtate, ſhall by this new way of *Regiſtries*, be (if there ſhall be no proviſion or exception for ſuch Caſes) neceſſitated and put to another needleſs charge, and trouble of tranſmiting Copies of their *Judgments* and *Decrees*, which by a ſudden Satisfaction, Compoſition, or Agreement (which happens ſo often, as there is not one *Judgment* in every twenty in a year, conſidered one with another, which ſtands unſatisfied or unagreed, or remains as an *Incumbrance* for three Terms after) do come to be either uſeleſs, or not at all to be put in execution or be diſabled by ſuch reſtraints, to take *Executions* upon ſuch *Judgments*, which are not ſatisfied, though it be againſt a flying *Debtor*, or a waſting eſtate, or to acknowledge ſatisfaction upon any ſuch *Judgments*, until they ſhall be tranſmitted to the *Regiſtries*; where unleſs all *Releaſes*, *Satisfactions*, and *Payments*, either in part or in whole upon *Judgments*, ſhall be alſo entred. (Which with the other troubles of § 27.

Regiſtring, will be enough to keep all the men and people of the *Nation*, from the danger of falling into the *Lethargy* or *ſleeping ſickneſs*) they may receive mens moneys for Searches and Certificates, but never be able to give a certainty or truth of what ſhall be deſired of them.

§ 28. *Bonds*, *Bills*, and other Writings, which are now uſually made upon all occaſions, and at all convenient times and places, in above Nine thouſand Pariſhes, *Sundays* onely excepted, and many of them in half or a quarter of an hours ſpace, with great diſpatch and eaſe to the people; cannot, if they muſt be *Regiſtred*, be made now, or done as formerly, without both the parties travelling together to the *Regiſtry*, or meeting at 1. or more Shiretowns in fifty & two, to acknowledge and enter them, which may be Forty, Thirty, Twenty, or Ten miles off from the place where the Contracts were made; and will ſo trouble every mans ordinary, and formerly eaſie enough, affairs and buſineſs in that kinde, as to make them to be no leſs then extraordinary *Incumbrances*, and too much *diſcover* every mans Eſtate,

Eſtate, and double every mans miſery and wants, in taking away his credit, which might by degrees be a means to help him out of it.

Unlock and throw open every mans *Cloſet* or place wherein he keeps his *Writings* and *Evidences*, and expoſe them for the *Regiſters Fees*, to the view of every one that ſhall have a deſire to ſee and take Copies of them; which the *Chancery* and other *Courts* would not ſuffer to be done, or ſo much as to be ſeen or read by their adverſaries, unleſs at *hearings* or *tryals*; nor their *Counſel*, *Attorneys*, or *Solicitors*, to be examined as witneſſes againſt them, or to diſcover what they had ſeen, or underſtood by their *Writings* or *Evidences*. § 29.

Mens wives may by this means be as privy as themſelves, to their Eſtate and Evidences, which *wiſe* and *good men* many times finde fitting to conceal from them; to the end, that they may not laviſh, and be the more irregular in their deſires and expences. § 30.

And their children more prodigal and § 31.

waſteful, and leſs careful to pleaſe their Parents, or to be *governed* by them in their Marriages, when they ſhall know what is before-hand ſetled upon them.

§ 32. Thoſe that have good Eſtates, will be rendred ſo, more then needs, to be viſible; as the *Taxers* or *Aſſeſſment-men* ſhall be ſure to over-rate them; for although there be found ſuch *Deeds*, or *Conveyances*, or *Bonds*, or *Bills* made unto them, which may ſeem as a good Eſtate or *Income* they cannot, or at leaſt will not be at leaſure to computate their charges, and out-goings, or be able to judge how much they are *truſted* or *ſeiſed* to other mens uſes, or how much of thoſe Lands are afterwards ſold, or how much they ſtand indebted to others.

§ 33. Many thouſand *Tradeſmen* and *Merchants* in the Land, who live upon credit, diligence and induſtry, and have of their own ſcarce a tenth part of what they trade for, or is in their Shops or Warehouſes, will be ſo laid open to the view and jealouſie of their Friends and Creditors, or ſuch as they trade with, as they will every one

one be ſo afraid of the poor *Debtors*, and one of anothers being not paid firſt, or that they may come to be looſers, as they will ſtrive who ſhall get himſelf firſt paid; and ſo altogether diſtruſting and vying who ſhall be the firſt, ruſh in at once upon them, and be ſure to deſtroy and tear them all in peices.

§ 34. No man when he ſees a ſmall or no Eſtate in a yong hopeful *Tradeſman*, will lend him any thing to ſet up withal: And all thoſe advantages which men may have by their towardlineſs, and honeſt, and hopeful endeavors will by this Inquiſition be taken away and made to be of little advantage.

§ 35. Many of the *Nobility*, *Gentry*, *Merchants*, *Tradeſmen*, *Mechanicks*, *Yeomen*, *Farmers*, *Husbandmen*, and even day *Laborers*, being two parts in three of the *Houſe-keepers* or *Maſters* of Families in all the Nation, who by the late Wars and Miſeries of the times, and decay of Trade and Merchandiſe, are come either a great deal indebted, or ſo far behinde hand, as more then one half of them may be rationally enough believed to

be

be, if their Creditors did but know the weakneſs of their Eſtates, not far from the priſon door, or having their Lands extended; and all of them, if a Statute of *Bankrupt* could be ſued out againſt them, irrecoverably thrown into ruine, will by this means be very much prejudiced in their Eſtates and ſubſiſtance.

§ 36. *Yonger Brothers* and *Soldiers*, and all ſuch as have no Lands, or certain viſible Eſtate, and are a conſiderable part of the Nation, will never be able to advance themſelves in Marriage, or borrow money to buy Land, or trade withal.

§ 37. Such a *Regiſtry* will make a man that is but a little going behinde hand, to be reckoned as quite undone for that, if his Payments and Diſcharges of his *Mortgages* and *Bonds*, and every half year or ſix moneths payment of Intereſt, be not alſo *Regiſtred*, or a *ſearch* made through all the Fifty two Counties and *Regiſtries*, what he hath paid or diſcharged, or purchaſed, or had *Regiſtred* in his name in others places, or which he hath in *Charter*, *Parties*, or *beyond Seas*, or in *Factories*, *Retorns*, or *Conſignments*, clearly

ly liquidated or made to be certain and apparent, and will require a great deal of time and money to travel, or ſend from place to place ſo far diſtant to inquire of, which *envy* and *ill-will*, or the ſaving of charges, will hardly or doe very ſeldom permit, he ſhall be given over as a dead man, or a perſon infected with the Plague, or ſome contagious diſeaſe which no man will come at.

§ 38. And if the party thus wronged or abandoned, ſhall go to right or clear himſelf by *proofs* or *Certificate*, it will not onely make it to be an unuſual and ſtrange kinde of Proces or Inquiry, but to be very chargeable, whileſt by the failing of his credit, and falling on of his Creditors, he ſhall be ſure to be undone, before he can tell how to right or clear himſelf from that imputation.

§ 39. It will too much advantage and encourage Forreign *Kingdoms*, *States*, and *Commonwealths*, that are at preſent, or ſhall be hereafter in hoſtility with us, to make or continue Wars, when they ſhall from year to year be able to finde the *poverty* and

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conſumption of the Nation; and will by ſuch an inſpection into our *Books* and *Regiſters*, inſtruct Forreign *Merchants* or *Bankers*, how to raiſe their moneys exchange or commodities, by working as they do too much already upon our *Merchants*, wants and neceſſities, who will not be able to ſend or carry ready money, if they could be allowed to do it.

§ 40. *Bills* of *Exchange* which have their ground and foundation altogether upon the credit of him that gives it, and are as well at home, as in the parts beyond the Seas, a cauſe of *traffick* and *commerce*, and the ſwift and ſure conveyers of money; and if it could be brought to a true *examen* and accompt, would appear to be ſo much carried and communicated to ſeveral hands and uſes, meerly upon *Exchange* and *Credit*, as amounts to half the money and perſonal riches of the Nation, will not in ſuch a growth and fertility of *diſtruſt* and *jealouſies*, as will by this means be in all men and parts of the *Commonwealth*, when it ſhall be known what money *Merchants* do ow, or take up at Intereſt, to Trade withal; be

be now made uſe of as formerly without a ſearch, through all the Fifty two *Regiſters*, for fear leaſt the *Bills* ſhould not be anſwered: And where *Merchants* and *Men of Credit* are, if they accept a *Bill* moſt careful to perform it, and not onely they that ſend, but thoſe that do accept it, look upon a proteſt of not payment, as ſome mortal ſickneſs happening to their *Trade*, *Credits*, or *Eſtates*, will by reaſon of this *Engine* of *jealouſies* or *diſtruſt*, neither know how to accept or give any *Bill* of *Exchange*

Will be very grateful to the *Theeves* and *Highway-men* of the *Nation*, who have long taken this way of ſending *Bills* of *Exchange*, to be a grievance and hinderance to their imployment; when men being ſo generally affrighted by theſe new kinde of *Regiſtries*, ſhall rather adventure to keep and carry their money themſelves, give them an opportunity of becoming, as they think the better keepers of it, and ſave them the hazard and charges of correſponding with *Oſtlers*, *Chamberlains*, and *Tapſters* in the *Inns*, ot to employ *Setters* § 41.

when by ſearch in the *Regiſtries*, they may know what money is ſtirring, and how to way-lay the payment or Carriers thereof.

§ 42. The *Aſſurance Office*, whereby ſo many do daily ſecure their Fears, Eſtates, and Adventures at Sea, now more uſed and requiſite then formerly, will be ſo much diſtruſted; as thoſe that were wont to be afraid of *ſtorms* and *caſualties* at *Sea*, will be now not a little afraid of the *Inſurers*, and whileſt they ſhall ſtand conſulting betwixt *Scilla* and *Charibdis*, ſpend ſo much time in it, as the news of their undoing may come unto them before they can finde the way to reſolve how to prevent it.

§ 43. Diſgrace and diſparage the City of *London*, the *Mother* and *Nurſery* of all our Trade and Commerce, at home and abroad, ſhut up the *Old Exchange*, take away or deſtroy all our Traffick, by Land or Sea, and the Shipping and *Navigation* thereof, and like a general *Beggery* caſt over all the *Nation*, make every man afraid to truſt or deal one with another.

Or

Or if to amend the matter, all *Bonds* and *Bills*, ſhall by their *Regiſtring* have the force and power of *Judgments*, *Statutes*, or *Recogniſances* beſtowed upon them.

Such a rigid and binding *ſecurity* which all men have hitherto looked upon as grand *Incumbrances* to their *Eſtates*, and did therefore in all their *Contracts* and *Bargains*, avoid as much as they could; and which, the people did ſo little deſire to preſs one upon another, as though ever ſince the Reign of King *Edward* the Firſt (which is now almoſt Four hundred years ago) it was in their power to require it, there is not above one *Statute* or *Recogniſance*, or *Judgment*, entred into or given as *ſecurity*, in or for every thouſand *Bonds* or *Bills* which are made, and taken every year in the *Nation*; and if they ſhall now, whether they will or no, have all their *Bonds* and *Bills* made to be ſo *fierce* and *biting*, will upon ſatisfaction and payment be inforced to a great deal of charge and trouble in the diſcharging or vacating of them; and in ſtead of taking of *Incumbrances*, § 44.

prove to be the greateſt and moſt general in the Nation.

§ 45. And not well agree with the *Laws* of *God*; and of this, and many other Nations to binde or *captivate* the Contracts of the people, which (*Sundays* onely excepted) are daily and hourly made to ſo much trouble, charges, diſcredit, and ſeverity, before they can be ratified, when as a more eaſie and gentle way of *Securities* and contracting one with another have hitherto, and for many hundred years together diſpatched them.

§ 46. Will cauſe thoſe that with care and diſcretion enough, may have an occaſion for themſelves or their friends, to ſtand bound in twenty ſeveral *Bonds* for payment of money, or performance of *Covenants*, or the like, to be ſo much diſcredited or diſtruſted by two or three *Bonds*, which ſhall be found to be entred upon *Record*, as every man doubting the *Priority* of the former *Bonds* (if they ſhall be of the force of a *Statute* or *Judgment*) will be afraid to meddle with them, or take them for *Security*,

Make

Make every man to be little better then a *priſoner* in execution, and to renounce the benefit of the *Law*, which was his birth-right, before he can borrow a little money to ſatisfie his neceſſity or occaſions, or to trade withal; and like *Eſau* ſell his birth-right for a meſs of *Potage* to pacifie his hunger; and every *Bond* and *Bill* to be as a continual and ſtanding *Commiſſion* of *Bankrupt* to hover over him, and tear and pull him in peices; and every borrowing of money, to be as a *rack* or *torture* of his credit, and a thraldom of his Eſtate. §47.

Strengthen the hands of the *Uſurer* and *Oppreſſor*, bruiſe the broken *Reed*, *Stretch out the paws of the Bear*, *and ſharpen the talons of the Vulture*; leave the poor and honeſt to the *cruel mercy* of the wicked, to be gnawn and devoured like *Sheep*, and teach the *Uſurers* (a great part of whoſe trade and cunning, it is already like the *Kite* to catch the *Chicken*) to finde out the neceſſities of the people, and prey upon them; and if they give not what *brocage* they pleaſe, to lend them money or to forbear or continue it at Intereſt upon the ſame §48.

ſame ſecurity (which Ten thouſand Bonds and Bills in this Nation, by payment of the Intereſt, and many times without, have been for two, three, four, or ſeven years together, without any ſuite or trouble begun, or made upon it) inforce them to all manner of *extortions* and hard *conditions*; which if they will not call a mercy or thank them for it, and fairly and quietly lie down, and have as many Feathers as they pleaſe plucked of them, and live in as much fear of them, as the *Partridges* do of the *Hawks*, and by ſo much the more for that the Uſuring Hawks can when they pleaſe (which the other cannot) know where to finde out their prey, utterly and at once deſtroy them by ſeiſing upon their Goods and Lands, and carrying them to priſon.

§ 49. Which will be contrary to thoſe moſt righteous and unerring *Laws* of *God*, and the minde and pity of the *God* of *Juſtice* and *Mercy*; who in his own bleſſed *Laws*, faith, *Ye ſhall not afflict any widow or fatherleſs child. If thou afflict them in any wiſe, and they cry at all unto me, I will ſurely hear*

Exod 22: v. 22,23,24.

their

their cry, and my wrath ſhall wax hot; and I will kill you with the Sword, and your wives ſhall be widows, and your children fatherleſs.

If thou at all take thy neighbors rayment to pledge, thou ſhalt deliver it him by that the Sun goeth down: For that is his covering onely, it is his rayment for his skin; wherein he ſhall ſleep. And it ſhall cóme to paſs, when he cryeth unto me, that I will hear. Exod. 22. v. 25, 26, 27.

Thou ſhalt not take the upper or the nether Milſtone to pledge. When thou doeſt lend thy brother any thing, thou ſhalt not go into his houſe to fetch his pledge. Deut. 24. v. 6, 10. Which gives no way or allowance to the tearing of their credit in pieces, nor agrees with what our *Saviour Chriſt*, and his bleſſed *Apoſtles* taught us, *To do as we would be done unto. And bleſſed are the merciful. But if ye bite and devour one another, take heed that ye be not conſumed one of another.* Matth. 5. v. 7, 9. Gal. 5. v. 13, 14, 15.

Executions cannot be made thereupon, without Certificate of the Bonds or Bills *Regiſtred* into the *Chancery*, as is provided by the Statute of *Action Burnel*, 11 *E.* 1. § 50.

And

And if they be certified, will make another charge, and may and ought to be pleaded to; as in the caſe of *Statutes Merchant*, or other *Statutes* allowed of, and provided by the *Statute* of 23 *Hen.* 8. *cap* 6.

§ 51. Whereby the Plaintiffs ſhall throw down and worry the Defendants, and the Defendants make a ſhift to get up again, and beat and take away their weapons from them by giving Bail, to make proof of their *complaints* and *ſuggeſtions* ſuing an *Audita Querelas* out of the *Chancery*, which like a Bill in *Equity*, having a long courſe of *ſuggeſtions* and *witneſſes* to attend it, will looſe more time, and make more charges upon ſuch an after *game* and *ſcuffle*, then would have been expended in the ordinary way of proceeding or getting in money due upon a Bond or Bill, not having the force of *Statutes*.

For *Statutes Merchant* are to have a *Capias* and a *Non eſt Inventus* returned, before there can be an extent or ſeiſure of his *Lands* or *Goods*; and upon a Statute in the nature of a *Statute Staple*, the *Plaintiff* or

or *Cogniſee* is firſt to have a Certificate from the Clerk of the *Statute Office*, to the Clerk of the *Crown* or *Commonwealth* in *Chancery*, who upon payment of an half penny in the pound, for the ſum expreſſed in the Statute, to the uſe of the *Supream Magiſtrate*, makes out the extent, upon which the Sheriff by *Act* of *Parliament* takes for his Fee twelve pence *per* pound for the firſt hundred, and ſix pence *per* pound for the other hundred, beſides other charges : Which Writ of Extent being returned, and filed in the *Petibag*, is the Warrant for a *Liberate* directed to the Sheriff, to give poſſeſſion of the Land extended, which is but many times the beginning of a greater charge, in bringing *Audita Quærela's* or *Bills* in *Chancery*,

When as it is in every year to be proved and acknowledged for a truth, That of Eight hundred Actions or Writs iſſuing forth of the Court of *Common Pleas* or *Upper Bench* in a year, in ſome one particular County for *Debt*, upon *Bonds* or *Bills* or in ſome other Perſonal Actions, there are no *Warrants* taken out to Arreſt § 52.

above Six hundred of them, in regard of the Defendants ſpeedy Agreement; and of thoſe Six hundred, not above Three hundred are Arreſted, or come to enter their appearance; and of thoſe not above a half come to plead or make any defence, and not the one half of them do afterwards come to tryal at the Aſſiſes; and not a fifth part of thoſe do come to move in Arreſt of *Judgment*, or ſue out *Writs* of *Error*, or put in Bills in *Chancery*: And thoſe that do not proceed ſo far as to Arreſt, do not put the Plaintiff or Defendant to ſo much as Ten ſhillings a peice charges; the ſecond ſort including the former charges not Twenty ſhillings a piece, if the Defendant be not a deſperate fighter, and hard to be taken; and the third ſort, if there be no ſpecial or long Pleadings, not above Thirty ſhillings in all; and the fourth ſort, or ſuch as come to tryal, not above four or five pounds, with all the charges reckoned together, beſides that of *Witneſſes* or extraordinary *Counſel*, ſo little is the expence of time and money, in the preſent way or courſe of ſuing upon Bonds and Bills, and

other

other Perſonal Actions. And ſo much is like to be the delay, and charges, and vexation of that which ſome would ſo willingly have to ſucceed it.

But if the trouble and charge of *Certificates* into the *Chancery*, and ſuing out of *Audita Querela's*, and ſuch a generation of Suits as are like to happen by ſuch a ſevere kinde of *Securities*, ſhall be endeavored to be prevented by making every *Regiſtry* to be a Court of *Record*, and to have ſomething to hear and determine, as well as to *Write* and *Regiſter*, there will be then Fifty two *Judicatories* or *Inferior Courts*, more then are already erected, one of which to be added to every County in *England* and *Wales*, will come before they will be *welcome* or *wanted*; for every Shire in *England* hath already the *Summer* and *Winter Aſſiſes*, *Quarter Seſſions* four times in every year, *County Courts* every moneth, *Sheriffs Turns*, *Courts Leet* and *Baron*, and weekly or three weeks *Courts*, in its *City* or *Towns Corporate*, amounting in every County to no leſs then Two hundred, one with another; which being in the wiſdom of for- § 53.

mer ages, and ſome hundreds of years paſt, and every years experience ſince, found to be in their due limits and bounds, very neceſſary and uſeful, do make as many *Law* days and meetings for the people, as they have need of.

§ 54. To help which new *Courts* or *Judicatories* to work or buſineſs, if Bonds and Bills which they would have the Regiſtring of, or any other of the *Cauſes* or *Matters*, which are and have hitherto been from time to time, diſpatched by the Courts at *Weſtminſter* (when they had before the *wars* and *troubles* of theſe later times, almoſt half as much, or as many again as they have now) with good content and conveniency to the people; and to all who have had occaſion to ſeek for, or attend their Jeſtice (if thoſe that are ignorant or peeviſhly ſelf-conceited or diſcontented, becauſe their deſires or unjuſt expectations have been fruſtrated in ſome *Actions* or *Suites*, which they proſecuted or defended,) would but let *reaſon* or *truth* be judge of their *miſtaken apprehenſions*, and not lay their own or other mens *errors* or *failings* upon the

Courts,

Courts or *Judges*, ſhall be transferred and carried into theſe *County Judicatories*, from the more knowing and *Superior Courts* and *Judges* at *Weſtminſter*; who beſides their well-known learning, and juſtice in all *Cauſes*, which are brought before them, may for an *evidence* or *teſtimony* of the peoples approbation of them, call to witneſs the many *cauſes*, which for many ages together, and in every year are, and have been removed from the *Inferior Courts* to the *Superior*, for want of Juſtice; and the many *Juries* and *Tryals* at their *Bars*, which by conſent, both of Plaintiffs and Defendants, are yearly and termly brought from the Counties, as well near as remote, to be heard by the more *learned* ſort of *Judges* and *Courts*,

§ 55. And put unto the Judgment, and determination of the leſs, or very little, or not at all able or knowing; will ſtop up the *ways of the places of the paths*, where *Wiſdom* and *Juſtice* made their conſtant habitation; deprive and take away (if they ſhall not be impowred to try by *Juries*) from every man, ſo much of his. Prov. 5. 1, & 2.

his part and intereſt in *Magna Charta*, as the want of his tryal by his *Peers*, or a *Jury* will come to, put the *ſpear* of the mighty into the hands of thoſe that are not able to weild or manage it, inforce the people to inquire of the *blind* and *deaf*, the way to make an end of their *controverſies* by carrying their *cauſes* to ſuch as are not able to judge or determine them, which may after the expence of much money, time, and labor, yield them as good a *Crop* or *Harveſt*, as *Ulyſſes* had when he counterfeited himſelf to be mad by Ploughing the Sand or Shore with his ſtrange kinde of *Cattle*, and ſowing of *Salt* inſtead of *Corn*.

§ 56. Or if the *Sheriffs Turns* and *County Courts*, ſhall be put into the power and care of thoſe *Judicatures*, That ancient and neceſſary *Officer* of *Juſtice*, and the *execution* of the *Law*, will be made either to be as nothing, or but the one half of what it was formerly, and ought to be; and the whole frame of that ancient and uſeful *Juriſdiction* put into diſorder, or diſſolved; or if the *Hundred Courts*, *Leet* and *Baron*, will take away the *inheritance*, *right*, and

property

property of the *Lords* of *Manors*, and the neceſſary *relations* and *dependences*, which are and ought to be betwixt them and their Tenants, contrary to *Magna Charta*, and the whole tenor of our *Laws* and *Liberties*.

Or if theſe new *Judicatories* ſhall as the *Syſteme-makers* had for the ſetting up of others, not long ago contrived, be made up of ſeveral parts or pieces, and torn or taken out of that goodly *order* and *frame* of our *Laws* and *Body Politick*; or as the *Romans* did in their original contempt, and poverty, in the getting the *Sabine* and *Neighbor Virgins* to be their *Wives*, ſally out upon other *Juriſdictions*, and *Raviſh* and take to themſelves what they can get, and no way belongs to them, will by all, or any of thoſe ways, not onely vex and turmoil all ſorts of people; and bereave them as the Members of the Body Politick of the daily care, influence, and communication of *Juſtice* which they uſed, and ought to receive from the *head* and *ſupream Authority* in a place ſo near unto it; and thoſe that ſit at the *Helm* of *Government* of that *term-*

ly,

ly intelligence which they ſhould have, and cannot well be without at *London* and *Weſtminſter*, concerning the due Adminiſtration and Diſtribution of *Juſtice*; beſides an half yearly inſpection into the due execution of *Juſtice* in the ſeveral Counties of the Nation, and the peoples content and ſatisfaction in it, by the Aſſiſes wherein the *Judges* of the Superior Courts, like ſo many *Stars* and *Planets* in our *Firmament*, do keep their circuits and courſes, but give them *ſtones* inſtead of *bread*, and *grievances* inſtead of *remedies*;

§ 57. Eſpecially if they ſhall be guided and managed by *ignorant*, though *honeſt well-meaning-men* or by *tradeſmen* (whom the *Athenians* and *Romans*, thoſe wiſe and great Commonwealths-men of the World, did never think fit to imploy in the Adminiſtration of *Juſtice*) or ſome ſmall practiſed or unmoleſted Doctors of Phyſick, or men of a contrary Profeſſion, to that which ſhould be the rule of their Judgment, *Town Clerks*, or ſuch who think they can underſtand better then write or read, *Committee* or *Lawyers Clerks*, or ſuch as ſhall

Sigonius de Antiquo jure Civium Rom. Lib. 2. cap. 7. & 18. Et Lib. 1. de Repub. Athenienſ. Lib. 1. cap. 7.

ſhall be but *Balbutientes*, or *Novices* in the *Laws*, or very little or not at all furniſhed with the knowledge, experience, or practiſe thereof, or be aſſiſted by *Sideſmen* of their own capacities, or ſuch as being *phantaſtick* or *ſelf-conceited*, ſhall think they ſpeak *Law* or *Reaſon*, or do *Juſtice*; when none but ſuch as ſpeed well by their doing the contrary, can be of that opinion, and would perhaps do right, if they could underſtand the way unto it, which to ſuch men will not be very eaſie, whileſt (like thoſe ignorant Judges, which *Plato* long ago complained of) they ſit as men aſtoniſhed in the hearing of any difficult matter, and are to be taught by others; and for want of knowledge in themſelves, or how to diſtinguiſh betwixt right and wrong, do not know how to judge of that which is ſaid or pleaded before them; but whileſt every one of them muſt have his own diſcourſe, and ſpeak his ſenſe as they call it; will be ſure, too often, to leave the *Point*, and *Reaſon*, and *Truth* of the *Caſe*, like ſome houſe or place infected with the *Plague*, and a *Croſs* and *Lord have mercy*

Plato, lib. 2. de Legibus.

upon us put upon it; and rail againſt the *Law*, becauſe it puzzleth them; and the *Lawyers for troubling them* (as one of a Country *Committee* not long ago ſaid) *with their many Reaſons.* And miſuſe their *power*, and make it *Arbitrary* in not doing what they might or ſhould do, doing many things they ſhould not do, and doing every thing they would do in making their *Orders* as their *Vulgar Reaſon*, or the *Byas* of *partiality* or *ignorance* ſhall carry them; or if one or more ſhould happen to be *Lawyers*, and the major part none, their knowledge can go no further then their *Votes*, or what they ſhall be able to perſwade their miſunderſtanding, or not at all underſtanding Companions unto. Mean while the people (who are ſure to ſuffer by it) are after a great expence of Money, and abundance of *Delays*, *Attendance*, and *Trouble*, which are uſually to be found in ſuch Courts of later *Edition*, ſent home with the ſad *ſtories* of their grievances and complaints, ready to make *Affidavit*, That *Ignorance* in the Adminiſtration of *Juſtice*, is an Accumulation of Evils; the

fruitful

fruitful parent of many grievances, and a *mighty* oppreſſor.

§ 58. Which will not be all the evils and miſchiefs neither, which are like to come along with it; For this their deſign of cutting, as it were, the *Moon* into *Stars*, and erecting theſe *Regiſtries*, and little *Tribunals*, will by degrees remove into them, the buſineſs and being of the City of *London*, and Courts at *Weſtminſter*; which hath hitherto, by the Juſtice and Trade of the *Nation*, reſiding in it, and a concourſe of all *people* and *Nations*, been made to be in that flouriſhing condition, which it was in at the beginning of the late Wars, in a more near and eſpecial manner, then to the more remote parts of the *Nation*, communicated her riches and increaſe, to above twelve neighboring and adjacent Counties, who by the raiſing of their Land and Commodities, and a daily and nightly vent in ſending of it thither, have double or treble improved their Lands in their yearly Rents, and values; and will not onely bring a great loſs, deſtruction and ruine to the City and Suburbs, conſiſting of above

Three and forty thouſand Houſes, above half whereof, with the ſeveral Families and Inmates, which are in the Suburbs, being almoſt two parts in three of the number, do depend onely or very much, upon the *termly* meetings at the Courts of *Juſtice*, but impoveriſh and make a general diſturbance in all the parts and Counties of the *Nation*, as well near unto it, as remote.

§59: Which are ſo *incorporate* and concerned in it, as they that know how the Trade and Money of *London* is diffuſed, and communicated to, and over every part of this *Nation*; and that there is not a City or Shire-town, except *Briſtol* and *Hull*, but hath moſt of their Wares and Commodities from thence, and moſt of that upon day or truſt; and that there is not a *Mercer* or *Shopkeeper*, or *Innkeeper*, in all other Cities and Borroughs, and little Villages, but are furniſhed with their Wines and Commodities, and are as *tributary* unto them, and depend upon their welfare, cannot deny, but if *London* ſink, they are not like to ſwim; or, if *London* periſh, they are not like

like to be without the taſte or ſenſe of ſome of their miſeries.

§ 60. For no man can rationally imagine or believe, that after ſuch a ruine or diſtruction of this great *Emporium*, and onely *Town* of Trade, of the Three Nations of *England*, *Scotland*, and *Ireland*; and the taking away or leſſening the Courts of *Juſtice* at *Weſtminſter*, the Commerce or Trade of the Nation, can live or ſubſiſt in the *Cantons*, or little pieces of Trade or Judicatories which ſhall be erected out of it, or that it can produce any better effect, then the laying waſte of the glory of the *Nation*, and the leading into *Captivity* the *Laws* and *Liberties* of the *People*, or that half of the Fifty two Shire-towns, or any of them, can be ſo conveniently ſcituated as to have buſineſs and trade enough, to draw all the people and commodities from all parts of the *Nation* to them; or that *Lincolnſhire* Fens, or *Buckingham*, or *Northamptonſhire* Paſtures, or *Eſſex* and *Suffolk*, *Hertfordſhire*, *Kent* and *Surrey*, ſhould or can finde in any of their adjacent Shire-towns or *Regiſtries*, the hundred part of the vent which

which they now have for *Cattle*, *Sheep*, *Wool*, *Hides*, *Corn*, *Malt*, *Butter* and *Cheese*, and all kinde of Commodities; or that it will be any more then to kill and destroy the Heart, the principal part and seat of life; and to hope notwithstanding, that the Liver, Veins, and Arteries, and all that conveyed Blood, Spirits, and nutriment to it, and received life in exchange from it, or the Feet and Hands, Stomach and Belly, that used to supply and be subservient to it, or the Head and Eyes that used to govern or guide the Body which belonged to it, can be in any good condition, and enjoy a health or welbeing, when that so eminent, so vital, and principal a part of the Body shall be cast into a *Consumption*, languish, or be extinguished.

§ 61. And yet when all is done, and the sad *effects* and *consequences* of it suffered, the design or pretence of these *Registries* of securing all *Purchasers* of *Lands*, and *Lenders* of *Money*, or to make Mens Estates to be so visible and transparent, as no man in selling or borrowing, shall be able to cozen or deceive, or not satisfie one another;

other; will be no otherwiſe poſſible, then to *break* in pieces, and diſturb a whole *Nation*, and put them to a great and unneceſſary expence, to do that over again which is already and better done, then they can do it, and leave them open, notwithſtanding to as many hazards and contingencies as they were before.

For *Confiſcations* and *Forfeitures* of *Lands*; for *Treaſon*, *Murders*, *Felonies*, and *Premuniries*, may be grand *Incumbrances* to *Purchaſors*, or the *Creditors* of thoſe that commit them. *Miſdemeanors*, *Fines*, *Forfeitures* of Offices or Places; *Mortgages*, *Statutes*, *Recogniſances*, *Bonds* and *Penal Bills*; breach of *Penal Laws*, *Covenants*, *Truſts* and *Conditions*, which ariſing out of the Wills or Pravity of Men, or the neceſſities or careleſneſs of themſelves, or oppreſſion of others; from *Cauſes* either in themſelves or others, or from *Actions* paſt or to come, may be a loſs or leſſening of mens *debts*, or great *obſtructions* in the recovery of them, *Dowers*, *Intails*, powers of *Revocation* (not to mention or inſiſt upon the various or manifold hinderances therein,

therein, which may arise or come by *Copihold* Estates, which being not chargeable with Debts or Extents, are in themselves Incumbrances, and were not long ago little less then a sixt or seventh part of the Lands of *England*, with their Admissions, Surrenders, in or out of Court, absolute or conditional, and their many several sorts of Forfeitures) Lands of *Gavelkind* or *Burgage Tenure*, *Joyntures*, made after marriage and refused, *Elopements*, and unlawful Marriages, Tenancy by Curtesie, and Trusts with other Mens money and estates, Moneys insured by Policy of Exchange, Bills of Exchange accepted; Errors in matter of Substance, in some of the Creditors Judgments, which may be a cause of Reversing them, *Disherison* of Sons and Heirs apparent, concealed Illegitimacies, *Intrusions*, and wrongful *Entries*, *Actions* of *Battery* and *Scandal*, and all manner of *Actions* or *Suits* in *Law* or *Equity*, which may lessen or prejudice any Mans Estate, *Assumpsits*, *Promises* and *Ingagements* by word of mouth (which may make as many Obligations, Troubles, and Ties upon

upon Mens Eſtates, as Bonds or Bills can do, or did before ſuch kinde of Writings or Inſtruments were invented, Imbargoes, high flying, gaming or gading Wives, which the *Roman Cenſors* would have reckoned amongſt *Incumbrances*; prodigal Children, loſſes by Fire, Sea or Land, Wars, Factors, or bad Servants, Suretiſhip, or too much truſting, death of thoſe for whoſe lives they held Land or Eſtates, or had any dependancy upon, ſickneſs, decay of trade, deceits or wrongs done by others, vain and unneceſſary expences; many of our Actions paſt or to come, *in facto* or *fieri*, *eſſe* or *poſſe*. And all manner of caſualties, accidents or contingencies, which are not viſible before-hand, or appearing, or poſſibly to be found in any *Regiſtry*, may prove to be no ſmall *Incumbrances* to *Money Lenders* upon *Bonds*, or *Bills*, *Judgments*, *Statutes*, or *Recogniſances*, eſpecially if the *Debtors* have no Eſtates in Lands, or ſhall be liable to *Statutes* of *Bankrupt*; which all the *Lillies*, or thoſe which pretend to be in Commons, or greateſt familiarity with the

Stars, or the greateſt wits or endeavors of men; can neither perceive before they happen, or tell any one how to eſcape, but muſt be conſtrained to reckon it amongſt the number of the *Grand Impoſſibles* to be done by the ſons of men, and confeſs it to be a work onely fit for *Omniſcience* and *Preſcience*, of which there will be a *Non Datur* to theſe new kinde of *Regiſters*, as well as other men.

And would in the attempt of it, buſie and employ all the Clerks and Writers of the *Nation* (though to no other purpoſe) then to make the people travel up and down, vex themſelves with fears and jealouſies, and ſpend more then Twenty times as much again, as they do now in their Writings, Aſſurances, or Contracts; whereas all the charge of the *Inrollment Office* in *Chancery*, wherein three parts in four of the Inrolled *Deeds* of the *Nation* are inrolled, did never as yet coſt or put them to the charge of above One thouſand pound *per annum*.

The *Accompt* and *Ballance* of which vaſt *Regiſtry*, and the calculation of the Riches, Poverty,

Poverty, or Eſtates of Men, Lands bought or ſold, transferred or ſettled to uſes; and paſſed after or involved in two or three other Mens Eſtates. And what is become of the Money, with the Payments, Satisfactions, Profits, Incomes, Loſſes, Riſes or falls in expences of Houſekeeping, Apparel, or Recreations, Releaſes, Acquittances, and Diſcharges of Lands, Statutes, Judgments, Recogniſances, Bonds, or Bills, Promiſes, Covenants, or Contracts, with thoſe many numberleſs intricacies and impoſſibilities which will attend ſuch a work; will not onely confound the Auditor, or a whole Colledge of *Aſtrologers*, if they ſhould undertake it, but give them or any who ſhall come to be ſatisfied or ſecured by them; to underſtand, that it will be as vain in the product or expectation of it, as the deſign of *Utamacomock* the *Virginian* proved to be; Who being taken at home for a grand piece of policy, was ſent hither in King *James* his time, and directed by *Powhatan* his King or Emperor, to take the number of the people of *England*, and learn their

Cap. *Smiths* Hiſtory of *Virginia*, 223.

Eſtate and Condition, did when he came to *Plimouth*, ſtand at his Lodging door, and upon a long ſtick cut a notch for every one that came or paſſed by: But at laſt, finding his notches like to wear out his ſtick, and not being able to know or diſtinguiſh thoſe that paſſed by or returned; or for which, he had made notches before had the wit to give over and conclude the people to be very numerous, and the work impoſſile.

§ 62. Or if this *Impoſſible* could (as it never will) be made *poſſible*, and that all or any part of what is deſigned could be feaſible, and that there could be at every Shire-town ſuch a rare *Glaſs* or *Perſpective*, at the peoples charge, as they pretend to make for them; the moſt part of the people will, when all is done, be like to do but as they do already, which is not in one of every 500 bargains, or lending of money, or Contracts, which they make (unleſs where they have to do with ſome very much incumbred, and indebted perſons and Eſtates) to buſie themſelves or their *purſes* in ſearching for *Judgments*, *Statutes*, or *Recogniſances*,

or

or the *Scriveners* Books, or what *Fines* are levied, or *Deeds* inrolled, though the ſearch be not either very troubleſome or coſtly, but rather tarry at home, and believe one another, ſatisfie themſelves by private Informations and Inquiries, and take as they have all this while done, Covenants or Collateral Securities, to be freed from Incumbrances; or upon any probability of diſtruſt, cauſe them to be diſcovered upon Oath, and render this deſign of *Regiſtring* to be not onely a great charge and trouble to the *Nation*, but to as little purpoſe, as Mr. *Henry Robinſons* kinde office of *addreſſes* or *helps* to borrow or lend moneys, buy or ſell, or Rent Land or Houſes; help Men or Maids to Services, or any that want *Solicitors* for their *Suits* at *Law*, *Cum multis aliis*, which being erected at his own charge three or four years ago: The people who thought they could better do their buſineſs themſelves (though he was content to take for his Fees, but what they themſelves ſhould think reaſonable) did ſo little take care to trouble him with, as he hath by this time found it to be onely

an

an eſſay of his own invention, which hath neither anſwer'd his charge or expectation.

Nor will the hopes of ſtifling of *Actions* or *Suits* at *Law* in the *Birth*, or laming of them in the proceedings, by imitating the courſes or ways now uſed by *Notarial Bonds* in *Holland*, and the *United Provinces*, *Bonds* and *Writings* in *Spain*, with *Guarantigias*, and the *Regiſtring* of *Bonds* in *Scotland*; Ballance or recompence all or any part of thoſe great *diſturbances*, *ruines*, and *alterations* in the *Nation*; and *troubles* and *charges* in all *Mens Eſtates*, *Buſineſs* and *affairs*, which will ariſe and happen by theſe *Offices* of *Incumbrances*.

The way or courſe of *Notarial Bonds* and ſuing for Debts, or upon Contracts and other Perſonal Actions in *Holland*, and the *United Provinces*.

§ 63. For in *Holland*, and the reſt of thoſe *United Netherlandiſh Provinces*, where (as in many other *Tranſmarine* parts) they do beſides ſome of the *Canon Law*, retain and make uſe of much of the *Civil* or *Ceſarean*, and imploy *Publick Notaries* (who were anciently

anciently conſtituted and ſworn to make the peoples Contracts and *Inſtrumenta Authenticata* in their due Forms, and keep *Protocols* or Records thereof, which being ſubſcribed by them, are beſides the Witneſſes, inſerted to paſs, and ſtand for as much as for two Witneſſes) they are not forced to go unto the *Publick Notaries* to make their Bonds or Writings Notarial, but do in ordinary and common Cauſes, unleſs in Matters onely of concernment, or where they think the *Obligors* will ſo fail them, as to inforce them to a Suit or Action.

Panormit. & Durand. Specul. lib. 2. part 2. de inſtrument. Edict. 3. & 8.

Not give themſelves the trouble of paying three ſhillings ſterling for every Notarial Bond or Writing or more, according to the length thereof, which in thoſe *Provinces*, have no *penalty*, or *forfeiture*, or *double capital* (as they call it;) but where they have any ſuſpition of *non-performance*, do to avoid the charges and trouble of a *Publick Notary*, uſually inſert into Bonds or Writings of their own making, ſubſcribed (the Parties themſelves or Notaries, never uſing to Seal any Writings) before

before two Witneſſes, that they ſhall have the force and effect of Bonds or Writings Notarial: Yet notwithſtanding thoſe very Acts or Writings, as alſo thoſe which are made by the Publick Notaries, do not ſo well eſcape Exceptions and Cavils, as our *Engliſh* Bonds do, (which being made with a great deal leſs charge and ſolemnities, and in a moſt compendious, ſhort, and ſubſtantial form, very little differing from that which was in uſe ſome hundred years ago in *England*: And thoſe which are long before that, to be ſeen in the *Priſcis Formulis*, collected by *Marculfus*, have not a *Non eſt factum* pleaded to one in every Hundred of them: For which, if not proved, they are ſure to pay a Fine to the State;) but do like ſome Rivers, which run a great way or circuit, before they come to their full growth or a concluſion, firſt begin, (if it be for ſmall inconſiderable ſums of money, not exceeding a certain limitation) before the *Vreede Maeckers*, or Peace-makers, who are in Cities, and not in *Dorps* or Villages, yearly conſtituted by the *Magiſtrates*, to endeavor what they can, to make an accord betwixt

betwixt Parties, in ſuch kinde of controverſie. And if they go to other Courts, before they have debated the matters, are upon Plea or Allegation of it, remanded thither again; where, if they cannot make an end, they are to be heard before the *Schepenen* or *Scabini*, or *Aldermen* of the City, who do judge by Arreſt or abſolute Sentence without appeal, to a certain limited ſum, according to the priviledges of every City, as at *Amſterdam* to Forty pounds, or the like. But if the *Cauſe* be above, their allowed *Cogniſance*, the *Plaintiff* is to commence his *Action* in the Court of the Place or Province where the *Reus* or *Defendant* dwelleth. For the rule of the *Imperial* or *Civil Law* which they follow, is, That *Cognitio prima competit judici loci illius ubi domicilium habet is qui convenitur & actor ſequi debet forum rei*, the Suit or Action is (except in ſome ſpecial or priviledged *Caſes*, as of *Orphans* or Publick Concernments, or betwixt Strangers, where they may at firſt go for *Juſtice* to the *Higher Courts*) is to be commenced in the Court, under whoſe *juriſdiction* the *Defendant* in-

habiteth (which may bring many inconveniences to the *Plaintiffs*) where if the *Defendant* be not *Suspectus de fuga*, his person cannot be arrested without a *Petition* and *Order* thereupon, nor his Goods seised, if he be an *Inhabitant* or *Burger*, unless they be carrying away by Boat or Waggon, or otherwise (which to the great ease of the people, are done in *England* without those niceties, by known and trusted *Officers* in the Courts of *Justice*) or sometimes do Petition and procure an *order* to have some to be named a *Curator*, to go into the house and take an *Inventory*, and a care that none of the Goods be imbezled. Upon which, or a bare *Citation* or *Summons*, if the *Defendant* shall appear and give Bail or Caution, follows their tedious and unnecessary *Circumstances*, *Formalities*, *Enumeration* of *Words* and *Synonimas* in their *Procurations* or *Letters* of *Attorney*, four times longer then ours, or more then need to be, with long *Attestations*. If any of the parties be absent, under the hand of a *Publick Notary*, or *Certificate* under a Town or City Seal; if it be in another *Province*,

Province, accompanied with their very long, chargeable, and unneceſſary diſcuſſions, upon the form or validity of thoſe *Procurations* (which are never or ſeldom heard of in our *Engliſh Laws* and *Courts*) and *Appeals* upon *Interlocutory Sentences* of allowing or diſallowing them, *Exceptions* declinatory to the *Judge* or his Juriſdiction, Exceptions, Dilatory, and Peremptory or Pleas to the *Action*, or *Bond*, or *Writing*, as that the *Notary* is not of good fame, or authoriſed, or that he doth uſe to make falſe or counterfeit Writings, that the *Inſtrument* is razed, vitiated, or cancelled, hath incertainty in the date, that there was another *Contract* or *Agreement* made at the ſame time, or that the money is paid in part or in whole; that the parties did not ſay or agree to that which was written (which the *Eſtoppels* in our *Engliſh Laws* do not permit) or that one of the Witneſſes named in the *Notarial Bond* or *Writing*, denies any or ſome part thereof to be true, or hath depoſed falſe, with multitudes of other *Exceptions* and *Allegations*, which are uſually objected

against *Notarial Bonds* or *Writings*, the rule of the *Civil Law*, allowing in all cases, *Si objiciatur publico Inſtrumento in modum Exceptionis falſitas defectus conditio vel aliquod ſimile quod ibi debuit eſſe vel non eſſe, ſi probetur per teſtes quòd objicitur dicta teſtium præferuntur Inſtrumento, niſi ipſum Inſtrumentum juvetur per alios teſtes qui ſecundum illud teſtificentur*: Where any falſity, defect, condition, or the like, is proved by Witneſſes, the Depoſitions or Sayings of ſuch Witneſſes, are to be preferred before the *Inſtrument*, unleſs it ſhall be aſſiſted by other Witneſſes which teſtifie for it; the inſerting into the *Dutch Bonds*, the Condition of the Debts, or how or for what the money did grow due (which are not in our *Engliſh*) giving too great an occaſion of thoſe many Pleas and Exceptions.

Specul. lib. 2, part. 2. de Inſtrument. Edit. 15. 617.

In any of which, if there ariſe any *Queſtio Juris*, or matter of *Law*, the *Judges* do order the *Advocates* on both ſides, to put all that they have to ſay in writing, which they call *Memorien ende Advertiſement van Reichten*, which are commonly very

very long and prolix, and given in to the Court to the *Greffier* or his *Clerks*, and communicated to both parties; To which *Arguments* in writing, if the *Actor* or *Plaintiff* hath any thing to Reply (he as well as the *Defendant*, ordinarily reserving the strength of their matters & cause for an after game) it is also done in writing *voluminous* enough, which is called *Additien*; against which, the *Reus* or *Defendant*, opposeth in writing his Duply, which are both together put into a *Saeck* or Bag, for the *Judges* private inspection and debate, without *Communication* or *Copy* of it to the parties. But if there be *Quæstio Facti*, or matter of fact to be discussed, the *actor* doth make his *Eitseh* or *Demand* in writing, and the *Reus* his *Antwoort* or *Answer* in writing; which if the *Plaintiff* denies the Replies, and the *Reus* or *Defendant* Duplies (whereas our *Pleas* in *England*, of Abatements, and many other formerly used *Pleas*, to the *Writs* being now disused) are very short and pertinent, to bring the matter to issue, and do not allow of any doublenes.)

After which *Pleas* or *Exceptions* discussed

ſed, and a *Litis Conteſtatio*, and the matters which are affirmed or denied, put into iſſue upon the point in controverſie, comes the terms of *Production* of Witneſſes, and their *Examinations*, with their *Exceptions* to them, & many times no leſs troubleſome (then tedious *Informations* after publication upon any queſtion of *Law*, or difficulty which do ariſe *in prima inſtantia* (which our *Judges* and *Reſponſa Prudentum* (if it be not upon *Demurrers* or knotty matters in *Law*) do diſpatch in very ſhort Rules and Orders) frequent Appeals by either parties, in the *Interlocutories*, as well as in the *Principal* or *Definitive Sentences*, or *Appeals à minima*, when the Sentence on the behalf of either party, are not ſo pleaſing as they would have it; (wherein the *Judges* of the Inferior Courts are by the *Formularies* of the *Judges*, to whom the Appeal is made, cited to appear as parties, and defend their Sentence, and ſometimes do or may at all times, if they will.) *Exceptions* to the *Nullities* of the Arreſt or Sentences, wherein they are never almoſt ſatisfied by reaſon of the want of learning and skill in thoſe Inferior

ferior *Judges*, who the better to content them, and satisfie their own Consciences, do upon any doubt or hardship in the *causes*, sometimes very honestly, send a dozen miles or more to the Cities or great Towns, to advise with *Advocates* what Judgments or Sentences to give in the *Causes* before them. From whence, if any of the parties like it not, there is an Appeal, and do too commonly hunt one another, if the cause be of any concernment, or that there be any animosity or spirit of Contention betwixt the parties, (for all *causes* are not so unhappy, as to be of one and the same length, or to run the same *Postes*) through all the Courts and Appeals they can come at, *viz.* From the *Dorps* and Villages, if the *sum* or *matter* exceed in value Four pounds; and from the bigger Towns, if Six pounds, to the Cities; and from thence, if it exceed Fifteen pounds, or according to the priviledges of some Thirty or Forty pounds, to the Court called the *Inferior Court* of the *Province*, which is an Assembly of learned *Judges* in a Court for the whole *Province*. From whence

Lib. de Statu Confederat. Provinc. Belg. cap. 11.

whence, if there be any diſlike of the Sentence, an Appeal (depoſiting One hundred and fifty pounds ſterling, which he againſt whom the *cauſe* happens to be, is to pay, as a mulct or penalty to the State) is to the *Hogen Raet* (if it be in *Holland*) or *High Court* of the *Province* (in which are very learned and eminent *Judges*) whoſe Sentence, if it content not any of the patties, he that thinks himſelf grieved, may upon depoſiting a ſum of money, proportionable to the greatneſs or value of the *cauſe*, and moſt commonly as much as the yearly intereſt of the ſum demanded amounts unto, that money as all other depoſited moneys upon Appeals, being by a *Namptiſſement* bailable, or to be taken out upon ſecurity by the party *triumphing*, till there be a final Arreſt or Sentence, deſire a reaudition (where our late Syſteme) and from it our Regulation in *Chancery* had ſome of their paterns; whereupon a like number of *Judges* to be added to them out of the *Syndici* or *Recorders*, which are *Lawyers* in the ſeveral *Stadt's* or Cities of that *Province*, are to meet and give a re-

hearing

hearing to the *cauſe*, which is to be final; the parties appealing in the *cauſe*, bearing their charges.

In all which, ſeveral and various *Traverſes*, and many years together expence of time and money (as in angry or vexed Suits of Law, or value, it too often happens) with their long and tedious repeating in their Acts, every *Interlocutory* circumſtance that was ſaid or ſpoken (which our Engliſh *Lawyers* ſpeaking or pleading half or whole hours together, do never put their Clients to the charge of) running one another, through all the *Courts* which they can appeal to, and onely *ſtopping and making an end, when they can go no further*, abundance of *Notarial Acts* and *Copies* of *Writings*, drawn out at length with large Deductions, and needleſs *Repetitions* (the whole proceedings being upon every Appeal to be done *de novo*, written over again, and not tranſmitted as in other places) and the great charge of taking *Copies* of *Acts* and *Sentences*, *Interlocutory* or *Definitive*, which may be ſometimes half a dozen in a cauſe *pro & contra*,

do make ſuch Bundles of Paper to be paid for, as beſides the Fees of *Advocates*, *Proctors*, and *Notaries* (which though leſs then ours, are ſo very often; and for every little matter or buſineſs repeated and called for, as they do before the cauſe be ended, amount to a great deal more) do many times exceed the value of the cauſe, and makes the people ſo weary of it, as they do ſometimes to avoid Appeals, refer their Cauſes to friends, and make an end by conſent, and get the Sentence of the *Hogen Raet* to confirm it, or Petition the Deputy *States* General to command the *Inferior Court* of the *Province* at the *Hague*, to hear it, and upon their Certificate, to give a final ſentence in it (whereas in bringing many a *Cauſe* upon *Bonds* or *Bills*, or other *Perſonal Actions* in *England*, to tryal in the *Higher Courts*, by a Jury of Twelve men before a learned Judge, the *Copies* and writing in *Paper*, both on the *Plaintiffs* and *Defendants* part; For *Declarations*, *Copies* of *Iſſues* and *Breviats*, do not exceed Twenty ſhillings.

All which or leſſer troubles might perſwade

ſwade us to be ſo well contented with our own Laws, as not to deſire to borrow, or be ſo much enamored of theirs, which are ſo extraordinarily tedious, troubleſome, and chargeable, of which ſome *Engliſh-men* of late have had the experience by the expence of above Seven hundred pounds (the charge of their own attendance not reckoned into it) ſpent in two years Suit, to get in ſome few debts, and yet are not come paſt the *Exceptions* dilatory; whereas leſs then the Twentieth part of that charge would in *England* have brought them a great deal nearer to a concluſion.

So little good have thoſe *Provinces* (a great part of whoſe *Natives*, are *Merchants* or *Sea-men*, whoſe *profeſſions* with us, do either ſtand ſo much upon their credit or have ſo little leiſure, as they are ſeldom found or ſeen in Suits or Controverſies) by the uſe of *Notarial Bonds* or *Writings*, or their variety of *Courts* and *Appeals*, or their buſie little *Vrede* or Peace-makers, who as the *Sprouts* out of the *Root* of ſome old *Time*, ſhattered ſturdy *Oak* are but the weaker *off-ſpring* or *reſemblance* of the

long ago disused *Arbitri* in the old *Civil* or *Roman Law*, who did sometimes judge of *Causes* which were *Leviores* or *Ad judicandum faciliores*, or the *Reciperatores*, or *Recuperatores*, which (like our *Juries*) did onely judge *de facto* of the Controversies, and both *Arbitri* and *Recuperatores* could not be made or allowed of, without the consent of the *Prætor* or *Lord Cheif Justice in cujus arbitrio fuit*, when the Suitors required it *Dare aut non dare*, in whose power it was to grant or deny them; and unless where the Controversies had before hand tired and run the parties out of *breath*, and made them willing upon any terms, almost to sit down and be quiet, did as they do with us, as little stay and care Suits and Controversies, as *old Womens* confident Medicines do Diseases, or our late *Friend-makers* did in some Counties finde wit enough to be partial, and demand Fees for their labor and pains, in hearing and debating of differences, though they had neither wit or power to make an end of them.

Sigonius, l. 1. de Judiciis. cap. 22. & 24.

Of

Of the manner of proceeding in *Spain*, upon their *Bonds* with *Guarantigias*.

In *Spain* though every man is bound to go to the *Publick Notaries* or *Escrivano's del Numero*, being a certain allowed number in Cities or Towns, or in default thereof to the Kings *Escrivano*, whose places are sold at great rates to make their *Bonds*, *Bills*, and *Contracts* upon his Paper, stamped or marked with his Arms, and pay four *reals* or two shillings *sterling*, for the making and entring of every one of them, and that against such *Escritura's* there can be no direct Averment or Plea of *Non est factum*; yet the rigor of the *Creditors*, and the necessities of the *Debtors*, do make them like strings too much or too hard strained, to be easily enough broken: For when Execution comes to be prayed upon such a *Bond*, which are like our *English Statutes Staple*, and have a *Guarantigia*, but with more binding words and Concessions inserted in them in this manner, *Damos Poder à todos y qualesquier Juezes y Justicias ante quien la presente Carta fuere presentada para que* §64.

Gonzal. Suarez de Paz. 4 part. Tom. 1. cap. 1. & 10.

que ſobrelo contenido en la Dicha Carta hagan Execution en nueſtras perſonas y bienes aſſi y tan complidamente come contra nosotros fuiſſe dada ſententia definitiva por Juez competente y fuiſſe por noſotros conſentida y paſſada en auteridad de coſa juzgada, We give power to all whatſoever *Judges* or *Juſtices* to whom this preſent writing ſhall come, according to the Contents of the ſaid Writing, to make out or grant Execution againſt our Perſons and Goods, as fully as if a Sentence definitive had been given againſt us by *Judges* competent, conſented to by us and paſſed by Authority as a thing adjudged; and though the *Clauſula Guarantigia* be ſometimes omitted, yet ſay their Laws, *Sufficit inſtrumentum publicum à tabellione numerario confectum idque praxi receptum*, It is as powerful and binding in their common practiſe, ſo as it be made by thoſe allowed *Notaries*.

Lib. 2. Tit. 23. lib. 4. Recop. Cartas Contratas y Publicos, &c.

And the Plaintiff brings it to the *Judge*, to demand Execution, he is after ſeveral Diſcuſſions, As whether the Plaintiff be *Perſona legitima ſtandi in judicio*, be a perſon that is capable to ſue, or doth rightly pray

Gonzal. Suarez de Paz, 1 part. Tom. 1. cap. 2. & 22, 23.

pray Execution; or whether the *Judge* hath Juriſdiction over the Debtor, who is to take his Oath, how much is due to him; or if he appear by his *Proctor*, is to examine, and to be well ſatisfied of his Procuration, and view and obſerve well, if the *Bond* or *Notarial Writing* be not razed, vitiated or cancelled; and then alſo there do not want Pleas to hinder the Execution.

As payment in part or in whole, or that the *Obligee* did afterwards promiſe not to demand it, that the Contract was Uſurious, or made by fear, or force, or forged in the ſubſtantial part of it, that there are *Nullities* for want of ſome Solemnities, or that it was entred into by a ſon under the power of a Father, or by a Pupil, or any other who was not *ſui juris*, or a Scholler in an *Univerſity* (in which *Caſes* the *Judge* is *ex officio* of duty, *Repellere actorem abſque eo quòd debitor petat*, to deny the Plaintiff, though the Debtor do not require it) or *non numeratæ pecuniæ* that the money was not paid, or *rei non traditæ* the thing not delivered, or ſome other agreement, compenſations, or recompence, or that *cauſa debiti in inſtru-* Part. 4. Tom 1. temp. 3.

instrumento non continetur, that the cause of the Debt was not expressed in the writing, that the Instrument or Writing produced, was not the Principal; that there is a *lite pendente*, before an Ecclesiastical Judge about an Oath unlawfully taken in the confirmation of that Contract, or concerning that Action, and the like.

After all which, if (the Defendant making no proof of his Plea, or getting no allowance of it) and that there be no Appeals, which from one *Tribunal* to another; and in such a multitude as there are of several Courts and Jurisdictions, are there usually lengthened to a great expence of time and money, and an Execution be awarded against the Defendants Goods (which if they be then, or shall be afterwards removed into some other (as there are many) petty or neighbour Jurisdictions or Territories must have Letters Requisitorial, from the one *Judge* to the other, which may make the Execution to be very arbitrary and tedious) the Goods are pretended to be another Mans; and upon that begins another tedious Plea and Proces, with

with as many Appeals as can be had, or the like Pleas, Pretences, and Appeals, if his Lands be moleſted; or if his body be impriſoned, in default of Goods or Lands, or Bail given, that the Goods or Lands ſhall be ſufficient to ſatisfie the demand and charges, *Tempore ultimæ executionis*, at the laſt *determination* or *execution*, as they term it, claims a five years time to agree with his *Creditors*, of whom, if the major part conſent, the reſt are concluded; or in regard of his poverty, prayes to be maintained in priſon at the charge of the *Creditor*, who alleaging him not to be ſo poor as he pretends, there begins another pleading to prove or diſprove that; or if he come out of priſon upon a *Ceſſionem bonorum* with an *Iron Chain*, or *Coller of diſgrace* about his neck (which our charitable *Syſteme-men* would have borrowed to tranſport as a faſhion hither) hath that alſo many times quickly taken off by the *Miſericordia*, or Judges of Equity.

So as the over *ſeverity* and *power* of the *Spaniſh Creditors* upon the *Debtors*, and the *Debtors* care and cuuning to avoid it,

do (if peace or neceſſity in ſome other reſpects, do not ſooner perſwade an end) but the more fiercely engage the Suit and Controverſies; and in ſo long and tedious courſe of Appeals, through ſo many little and greater Courts and Juriſdictions, make the one to be almoſt ruined, and the other ſufficiently tired. The *King* well paid for his *Paper*, the *Lawyers*, *Proctors*, and *Notaries*, not at all diſpleaſed; and all that the people (who being the poor Subjects of a rich and ambitious *King*, are ſuffered to talk of Gold and Silver, and the *Indies*, and the coming home of the *Plate Fleet*, but are little the better for it) do get by it, is to have ſo little *Faith* or *Credit* one with another, as not to be able to borrow any money without ſuch a *dire* and *prejudicial Security*, which was not *Lege communi* by their *Common Law*, or anciently uſed, but of late times introduced by a *Lege Regia* or *Law* made by the *King*, and to build too much of the *Faith* of their *Contracts* and *Bargains*, upon the honeſty of the *Notaries*, and make them, who are not always ſure, to be honeſt or incorrupted

Per Text in Lib. 1 & 2. Tit. 21. Lib. 4. Recop. & in Lib. 2. Tit. 21. &c.

ted too much Judges of the fact or proof, in many of their Affairs, Estates, or Concernments, whereby the *Escrivano's* grow rich, and know how to be gone at the ten years end, before the *Judges* appointed for that purpose, do come to visit or inquire into their actions, or give him a good reward, and tarry ten years longer (whereas in *England*, the people are at liberty to make and prepare their Writings, Conveyances, and Contracts by themselves or their Council, learned in the *Laws*.)

The *Spaniards* best knowing whether the *poverty* and *misery* of the one part of their people, and the *pride*, *cruelty*, and *avarice* of the other, *Vendeia* of offices and places of *Justice*, extremity of some of their *Laws*, and the sale and arbitrary Interpretation of others, be not a great part of the cause of the very many cryes and complaints of *Bribery*, *Delayes*, *Intollerable Expences*, and all sorts of *Injustice* in their *Courts*, *Audiencia's*, or *Judicatures*, (which are as often almost to be met with, as a *Spanish Don* stalking or looking big before his *Doncèlla*, or Mistress, or making

a ſhew of a great Feaſt with a half or quarter of a *Hen* roaſted;) and that he that hath the longeſt *Breath* and *Purſe*, is ſure to carry the cauſe, and come to his journeys end upon good Conſiderations.

§ 65. The Form of a *Scotch* moveable *Bond* for *Money*, and manner of *Regiſtring*, and putting the ſame in *Suit*, and the proceedings thereupon in their *Court* of *Seſſions*.

In *Scotland* (where they had been ſo long without putting thoſe *Laws* which they had into *Writing* or *Order*, as our King *James* the Firſt, and theirs the Sixth, thought it high time to command Mr. *John Skene* Clerk, *Regiſter* of the *Council* and *Rolls* in *Scotland*, to collect and compile together the *Auld Laws* and *Conſtitutions* of *Scotland* furth of the *Regiſter*, and other *auld* and *authentick Bukes*) they have ſuch a ſcarcity of *Laws* of their own, as Mr. *Tho Craig*, a learned Author and Advocate of theirs acknowledgeth, no longer ago then in the Raign of our King *James*, *Nullum apud eos jus eſſe proprium ſcriptum ſi ſtrictè jus proprium accipiatur niſi id quod*

Craig, Lib. 1. de jure Feudali Dieg. 8.

Acta

Acta Parliamenti dicitur. They had properly no written Laws of their own but *Acts* of *Parliament*, which until then, did lie hid as it were in their *Rolls*, and their *Decisions* in their *Court* of *Edenburgh*, and *Practicæ Veteres* being also in *Manuscripts* and *private hands*, obnoxious to the change or arbitrary *Interpretation* of *Judges*. *Ita ut in tanta scriptarum legum inopia apud eos naturaliter in plærisque negotiis jus civile sequuntur*: Insomuch as in so great a penury and want of *Written Laws*, they do naturally, as he terms it, not onely in most of their Affairs, and their old *Courts* of *Session*; but in this which they have now, (by no antienter an *Institution* then that of King *James* the Fifth, Grandfather to King *James* the Sixth, confirmed by the Pope in *Anno* 1534.) And all their *Contracts*, *Obligations*, *Civil Transactions*, *Actions* and *Suits* at *Law*, *Judgments*, and *Sentences* follow the *Civil Law*, and retain so much of the *Canon* or *Pontifician*, as where any thing happens to be of *Ecclesiastical* concernment, or *ubi imminet scandalum* (that large Territory and

Craigius, l. 1 de jure Feudali Dieg. 2.

Skene's form of Proces before the Lords of the Council and Sessions, cap. 1.

and Precinct of the *Kirkmen*) where there is any matter of *Scandal* in the *Caſe Jus Canonicum præfertur*, that of the Canon juſtles in and takes place.

From which neceſſity or want of Laws of their own, and the great uſe which they make of the *Civil* and *Canon Laws*, came the *Notarial Faith* in many of their Writings, with the uſe of *Publick Notaries* which were at firſt, ſaith Maſter *Craig*, inſtituted in the Empire, *Cum privatarum ſcripturarum fides vacillare cæpit*, when there began to be a jealouſie upon all private *Deeds* or *Writings*, for that many men made it their ſtudies or buſineſs to counterfeit hands and writings, as *Juſtinian* witneſſeth, inſomuch as to remedy it, there was an *Edict* made by the Emperor, that no private *Deed* or *Writing* ſhould be credited if the party ſubſcribing, denied it, unleſs it were teſtified by three witneſſes *Qui de veritate deponerent*, which ſhould depoſe it: And that ſuch private writings to prevent counterfeiting *in publico poſtea fierent, & per publicam perſonam expedirentur*, ſhould be afterwards made and diſpatched by

Craig, Lib. 2. de jure Feudali Dieg. 7.

by a publick perſon; from which uſe of *Notaries*, came the courſe of Scotiſh *Regiſtring*, which *in judicio fieri debebant* ought to be done in Court, or where the *Regiſter* or his Deputy are. But ſaith *Craig*, as the beginning of *Notaries* (who were antiently, and firſt of all, made by the Popes, and after that by Emperors and Kings, was to ſtop the abuſe of private writings, ſo *ex notariorum ſceleribus ad privatarum ſcripturarum fidem recurrendum*, by the fraud and wickedneſs of *Notaries*, the private writings came again to be of uſe and credit, which made them afterwards in *Scotland* to be ſo unwilling to truſt the *Notaries*, as they ordained by publick *Edict*, That no Faith in *Gravibus* or matters of great concernment, ſhould be put upon the Faith of a ſingle *Notary*; and that where there are two *Notaries*, the writing ſhould after the *Norman* cuſtom, be written by the hand of one onely; and do alſo uſe to give no credit to Notarial Writings, *De iis quæ ſub ſenſu non cadunt*, which are againſt Senſe or common Reaſon, or concerning payment of money, or part thereof, though the *Notary* affirm it. And

Craig, lib 2. Feudorum, Dieg. 7. 177.

And therefore the people of *Scotland* are not conſtrained by any publick *Law* or *Order*, to go to a publick *Notary* to make their *Bonds*, or to *Regiſter* them, until the time for payment thereof be expired, the money be not to begotten without Suit, and that they commence an Action, or demand Proces upon them, but do it as they have occaſion at *Edenburgh*, (not as our *Regiſtrators* would have it, in every *Shire* or *County*) beſoe the Lords of Seſſion; where a moveable Bond, as we call it, being delivered in by an *Advocate* or *Proctor*, a Copy thereof is delivered out with the *Order* for *Regiſtring* in this manner, *viz.*

The Order for Regiſtring a *Scotch* Bond.

At *Edinburgh* the day of

Zers. In preſence of the Commiſſioners for Adminiſtration of Juſtice to the people in *Scotland*, compeired Mr. *Th. V.* Advocat as Proctor for *W. L.* Underſignit, and gave in the Obligation ſubſcryvit with his hand, deſyreing the ſame to be inſert, and regra' in there Court Bukes of Juſtice, and to have the ſtrength of there decreit, and Letters and Executorials to be

be direct thereupon in manner therein conteint. The which desyre the saids Commissioners thought reasonable, and therefor hes ordained and ordains the said Obligation to be insert in there said Bukes and decernes the same to have the strength of there decreit and ordaines Letters and Executorials to be direct thereupon in manner therein specified; of the which, the tenor followes.

The Copy or Form of a *scotch* Moveable Bond.

I. A. B. be the tenor hereof, grant me to have borrowit and receivit really, and with effect in numerat money, at the making hereof from C. D. all and aill the somm of ane thousand merks Scots money, whereof I hold me well content satisfied and payed; and I exoner quyte clayme and simplt discharge the said C. D. his Airs, Executors, Assignays, and all vthers whom it effeirs of the samyne (renuncing the Exception of not numerat money, and all vther Exceptions of the Law that may be proponed in the contraire) for now and ever, which somm of ane thousand merks

money foreſaid as prin' with ane termes annuel rent thereof, I bind and obleis me my Airs, Executors, Intromettours, with my Gudes and Geir and Succeſſors whatſumever thankfullie to content, pay and deliver againe to the ſaid C.D. his Airs, Executors or Aſſignays, betwix the dait hereof, and the terme of *Witſonday* nixt to come; but longer delay, fraud, or guyle, with the ſomm of ane hundreth merks of liquidat expenſe in caice of faillie, or Regiſtration hereof in my default by and attor' the ſaid prin' ſomm and termes annuel thereof foreſaid, and togedder therewith, togedder alſo with the ordinar annuel rent of the ſaid prin' ſomm, conforme to the general Order and Cuſtom of this Nation, zeirly, termlie, and monethlie, during the not payment thereof after the ſaid terme. But prejudice of the Execution hereof at the ſaid terme or any terme or time thereafter, without any preceiding premonition to be made for that effect; whereunto I bind and obleis me and my foreſaids in the ſureſt forme. And for the more ſecuritie, I am content

and

and conſents there preſents be Regiſtrat in the Bukes of the Court of Juſtice, or any uther Regiſter that ſall be in uſe for the time, to have the ſtrenth of ane decrit of any of the Judges thereof interponed thereto, that Letters and Executorials of horning on ane ſimple charge of ſix dayes onlie, and vthers neceſſar may pas hereupon as effeirs and conſtitutes.

My Proctor in witnes whereof (written by *W. C.*) I have ſubſcryvit thire preſents, with my hand all' in the day of fiftie ſix zeires before there witnes.

For the *Regiſtring* whereof, the Perſewer or Plaintiff payeth Three ſhillings Engliſh, a Scotch mark whereof goeth to the *Exchequer*, and the reſidue to the *Regiſter*.

And doth it at the beginning of the Suit, before he can have any Proces to ſummon or inforce the Defendant to appear, whereas the Plaintiff is not in *England* put to move for Proces, or for an Order to Regiſter his *Bond*; but may at half an hours warning, at moſt times, of every working

day in the year, have it of course, by Officers intrusted for that purpose, and *Registers* not, or produces his *Bond*, until after the Defendant hath appeared; before which, three parts almost of four of *Actions* upon *Bonds*, are most commonly betwixt the taking out of the first Proces, and the Plaintiffs delivering of his Declaration, after the Defendants appearance, so agreed or come to composition, as they need not be at any charge of such a *Registring*: Nor is the *Bond* it self at any time delivered in *England*, to remain in the Court, unless in seldom Cases of *non est factum* pleaded, which would otherwise hinder the Plaintiff from indorsing any money received in part, or to agree, or deliver it up at pleasure, without moving the Court, or being at the charge and trouble to acknowledge satisfaction.

And as to the *Registry* or *Recording* of it, may be done with us without any inserting into a *Bond* or *Deed*, or other writing, and Proces of *Outlawry* granted in course upon contumacy, or default of appearance, without any *Petition*, *Order*, or *Registring* of

of the *Bond* or *Deed*, whereupon the *Action* is grounded; but with longer times or warnings in regard of the effects & consequence thereof, making men outlawed, to forfeit *Patriam et omnia quæ pacis, legis, juris, et possessionis sunt*, all that they have, & to be as our *Ancestors* held them, *lawless men* and *friendless men*; and was not therefore as *Bracton* saith, to be suddainly or hastily done, but to be allowed a *tempus legitimum*; which with us is not accounted less than after three *Writs* of *Capias*, returned *non est inventus*, with fifteen days between the *Return* and *Teste* of each of them; a *Writ* of *Exigent*, called upon in five *County Courts*, which are holden but once in a moneth, and a *Proclamation* at the Church door where the Defendant lieth.

Bracton de Corona, cap. 11

And it being thus *Registred*, a *Summons* upon not payment of the money, (something like our *Original Writ*) is upon a *Petition* and *Order*, with twenty days allowed for the time of the appearance, raised, or deduced against the *Debtor*, to be executed by an *Officer* of *Arms* upon his person, or at his dwelling house where he makes his residence with his *Wife*, *Barns*, and *Family*, commanding him to pay the money, and a *Copy* delivered before two

two witnesses. Which duly executed, and the *Debtor* not appearing, the *Creditor* may take out Letters of *Horning*, as they call it; which being four in number, are according to their *Law*, to be issued out one after the other, without a Clause of *Registration*, in this form, before he can be outlawed, and the like upon common and ordinary moveable Bond, *viz.*

Craig. lib. 3. Dieg. 2.

I A. B. be the Tenor hereof, grant me to have borrwit and receivit reallie, and with effect in numerat money from *C. D.* all and haill the somm of ane thousand Merks *Scots* money, whereof I hold me well pay it, and discharges him thereof, renuncing all exceptions that may be prepont in the contraire. Which somm of ane thousand merks money aforesaid with ane termes Annual Rent thereof, I bind and obleis me my Airs and Executors, to pay and deliver again to the said *C. D.* his Airs, Executors or Assignays betwix the dait hereof, and the terme of *Witsonday* nixt to come, without longer delay with the somm of ane hundreth merks of Expence in caice of faillie by an attour the said principal somm and Annual Rent thereof, togedder with the ordenar Annual Rent of the said principal somm zeirlie, termly, and monethly, during

ring the not payment thereof. In witneſs whereof, written be *F. G.* I have ſubſcrivit thire preſents with my hand at the day of zeirs. 1656. Before thire witneſs

A *Heritable* (as they term it) *Bond* for the payment of money to the Heirs of the Obligee, in this form, *viz.*

Ane Heretable Band bearing Infeffment, to be holden of the Diſponer.

Be it known to all men by theſe preſents, Me *A. B.* of *D.* Heretable Propriator of the Lands, and uthers underwritten, for ſamekill as I have inſtantly borrowit and receivit reallie and with effect in numerat money, from *C. F.* of *G.* at the Terme of *Candlemes* laſt by paſt, all and haill the ſomm of Thrie thouſand merks uſual money of *Scotland*, whereof I hold me well content ſatisfiet and payit; and therefor I exoner, quite, claime, and ſimpl' diſcharge the ſaid *C. F.* his airs, executors, aſſignays, and all uthers whom it effaires of the ſamyne, renuncing the exception of not numerat money, and all uther excepti-

ons of the Law that may be prepont in the contraire for now and ever. And therefor I bind and obleis me, my airs and ſucceſſors, dewlie, valiablie, and ſufficientlie to infeft and ſeaſe be chartor, and feaſing in dew and competent forme, the ſaid *C. F.* his airs and aſſignays, heretably in all and haill ane annual rent of ane hundreth and fowrtie punds money foreſaid, and if annual rents ſall be heichted or diminiſhed be the Laws of this Nation, than and in that caice in the ordinar annual rent of the ſaid principal ſomm of thrie thouſand merks as the ſamyne ſall be dew and payable for the time zeirlie, to be upliſte at two Termes in the zeir *Lambes* and *Candlemes*, be equal portions furth of all and haill my Lands of *D.* with houſe, biggings, zairdes, parts, pendicles, and pertinents of the ſamyne lying in the parochin of *G.* and Shrefdom of *S.* or any part thereof; and that be ane infeffment to be holden of me and my airs in frie blenſch for payment of ane penne upon the grund of any part of the ſaids Lands zeirly at the Feiſt of *Witſonday*, in name of blenſch ferm if it beis askit allanerlie.

And

And I obleis me and my foreſaids to warrand the ſaid Infeffment, and Lands, and annual rent above ſpecified, to be ſufficient, frie, ſaffe, and ſure, to the ſaid *C. F.* and his forſaids, from all perils, burdens, dangers, and inconveniems whatſoever at all hands, and againes all deidly, during the not redemption efter ſpecified. Like as I bind and obleis me and my forſaids, to make gud and thankful payment to the ſaid *C. F.* and his forſaids of the forſaid annual rent of the ſaid principal ſomm of Thrie thouſand merks zeirlie, at the Termes, and be equal portions above ſpecified; begun and the firſt Termes payment thereof, at the Terme of *Lambs* nixt to come for the Terme preceiding fra *Candl* laſt by paſt to the ſaid Terme of *Lambes* nixt to come, and ſua furth zeirlie and termlie there-efter, at the ſaids Termes, and be equal portions, during the not redemption efter ſpecified: And I obleis mè and my forſaids to pay to the ſaid *C. F.* and his forſaids, the ſomm of Twenty punds money forſaid, for ilk Termes faillie of the ſaid annual rent by and attour the ſaid annual rent; and further

I obleis me and my forſaids to enter and receive the airs and aſſignays of the ſaid *C. F.* in the forſaid annual rent *gratis*, without any compoſition als oft as I and my forſaids ſall be deſyrit; and if any caſualities of the ſaid annual rent ſall happen to fall in the hands of me or my forſaids, as Superiors thereof, be reaſon of non-entrie, lyferent, eſcheat, or any uther ways, than and in that caice; I bind and obleis me and my forſaids to diſpon the ſamyne caſualities, reſpectively to the ſaid *C. F.* and his forſaids, and to no uthers, and that alſo *gratis* als oft as the ſamyne ſall occur: And now as if the ſaids caſualities were alreadie fallen in the hands of me and my forſaids as Superiors above ſpecified; and than as now I, for me and my forſaids aſſigne and diſpon the ſamine caſualities to the ſaid *C. F.* and his forſaids to be diſpoſet upon be them at theire pleaſure. And notwithſtanding of the premiſſes, in caice it ſall happen the ſaid *C. F.* and his forſaids rather deſire to have the forſaid principal ſomm repait, nor retaine the forſaid ſecurity; than and in that caice, I bind and obleis me and my forſaids

to

to content and pay to the said *C. F.* and his forsaids, the forsaid principal somm of Thrie thousand Merks, with that termes annuall, at which the said principall somm sall be payit, togedder with all uther byruns of the forsaid annual rent that sall be awand for the time, at any Terme of *Candlemes*, here efter upon the premonition of thretty days, to be made of before to me or my forsaids personallie, or at our dwelling places, in presence of ane Notar and witnes as effeirs; and failling of thankful payment of the said principal somm and annuals thereof, being requirit as said is than and in that caice, I bind and oblels me and my forsaids, to content and pay to the said *C. F.* or his forsaids, the somm of Thrie hundreth punds of liquidat expense, in caice of faillie or Registration hereof, in our default by and attour the said principal somm and annuals thereof that sall be awand for the time. And for the more security, I consent thire presents be Registrate in the Bukes of the Court of Justice, or in any uther Register that sall be in use for the time to have the strength

of

of ane decreit of any of the Judges thereof, interponet thereto, that Letters and Executorials of Horning on six days and uthers neceſſar may pas hereupon, and conſtitutes

my Proctors

To my Lowits

or any of you conjunctly or ſeverally my Baillies in that part, ſpecially conſtitute, Greeting, I require and charge you or any of you that incontinent efter the ſight thereof ye pas, and give, and deliver Heretable ſtate and ſeaſing, actual, real, and peaceable poſſeſſion of all and haill the forſaid annual rent of ane hundreth and twenty punds, and if annual rents be heirchted or diminiſhed, be the Laws of this Nation, than in the ordinar annual rent of the ſaid principal ſomm of Thrie thouſand Merks, as the ſame ſall be dew and payable for the time zeirly to be uplift at *Lambes* and *Candlemes*, be equal portions furth of all and haill my ſaids Lands of *D.* with houſe, biggings, zairds, parts, pendicles, and

pertinents

pertinents thereof, lying in manner forſaid, to the ſaid *C. F.* or to his certaine Actornay in his name-bearer of thire preſents be delyverance of eard and ſtane of the grund of the ſaids Landes, and of ane Scots penny as uſe is without any delay: The which to do, I commit to you, my full power and commiſſion be thire preſents, to be holden of me and my airs in manner forſaid, Provyding always the ſaid annual rent be redimable be me and my forſaids from the ſaid *C. F.* and his forſaids, be payment to them or conſignation to thire behove of the forſaid principal ſomm of Thrie thouſand merks withal byrun annuals thereof, that ſall be awand for the time within the New Seſſion Hous of *Edinburgh*, upon any Term of *Witſonday*, or *Mertimes* hereafter, upon the premonition of threrty dayes warning of before, to be made be me and my forſaids to the ſaid *C. F.* and his forſaids perſonally, or at there dwelling place for the time, in preſence of ane Notar and Witneſs as effers, and the conſignation in caice of abſence, or refuſe to be in the hands of *G. K.* to be made furth

cummand to the ſaid *C. F.* and his forſaids upon the perril of the conſigner, with this proviſion, That the Extract of the Seaſing to follow hereupon ſall be als valeid ane Reverſion for uſing the forſaid Redemption, as if ane ſeveral Letter of Reverſion were dewly and lawfully made, ſealit, ſubſcryvit and regrat' apart with all ſolemnities requiſit conform to the Act of Parliament, albeit the ſamyne be not ſua done; upon the which condition thire preſents are grantit and acceptit in manner forſaid. In witneſs whereof writren be *W. C.* I have ſubſcryvit thire preſents the day of One thouſand ſix hundred fifty ſevin zeirs, before thire witneſs

And a *Moveable Bond* (as they call it) with a *clauſe* or *conſent* of *Regiſtration*, are not conſtrained by any *Law*, to go to a *Publick Notary* for the making thereof, nor do uſually do it, unleſs it be in caſe of the *Obligors*, not being able to write or read; which is then expreſſed in or near the

the place of subscription, That the *Obliger* with his hand *vouchand* the *Pen*, and led by the *Notary* did do it.

Nor to *Register* their *Bonds* which have a *clause* of *Registration*, until the time for payment of the money thereupon be expired, or that it be not to be gotten without suit; and they demand Execution or Proces upon them, but do it for the most part as they have occasion at *Edinburgh*, before the Lords of *Session*, whether they come from the *Orcades* and *Hebrides*, and *Ultima Thule*, the remotest parts of the *Highlands*, and do very seldom *Register* their *Bonds* with *Clauses* of *Registration* in the *Shires* or *Counties*, (whose *Registries* as to *Instruments* of *Seisings*, *Assignations*, *Reversions*, and *Regresses*, *Renunciations* of *Wadsets*, and the like, are by an *Act* of *Parliament* in *Anno* 1600, annexed to the office and place of the *Secretary*, and to its disposing; and the *Registries* of the *Sheriffs* Clerks to be marked and allowed by the *Clerk-Register*, and his *Deputies*) for that there they can have no Execution or Letters of *Horning* upon them, but

upon an Extract ſent from thence to the *Clerk-Regiſter* of the Lords of *Seſſion*, who upon their Order have onely power to grant them; and that all Actions and Plays depending or beginning in thoſe Inferior Courts, are ſubject to *Appeals* or *Reduction*, and have not that force or priviledges in their proceedings, as that Superior Court of the *Colledge of Juſtice*, or *Lords of Seſſion* hath, where a *Moveable Bond* being delivered in by an *Advocate* or *Proctor*, a Copy thereof the *Bond* it ſelf, (until now of late, for fear their *Regiſtry* and *Records* ſhould take another *Journey*, as they lately did to *London*) remaining amongſt the *Records* of that Court is delivered out, with the Order for *Regiſtring* in this manner, *viz.*

The Order for Regiſtring a *Scotch* Moveable Bond.

AT *Edinburgh* the day of zers in preſence of the *Commiſſioners* for Adminiſtration of Juſtice to the People in *Scotland*, compeired Mr. *Th. K.* Advocate, as Proctor for *A. B.* underſignit, and gave in the Obligation ſubſcrivit with his hand, deſiring the ſame to

be

be inſert and regrā in their Court Bukes of Juſtice, and to have the ſtrength of their Decreit, and Letters, and Executorials to be direct thereupon in manner therein conteint. The which deſyre the ſaids Commiſſioners thought reaſonable, and therefor hes ordained and ordains the ſaid Obligation to be inſert in there ſaid Bukes, and decernes the ſame to have the ſtrength of there decreit, and ordains Letters and Executorials to be direct thereupon in manner therein ſpecified; of the which, the tenor follows.

The Copy or Form of a *Scotch* Moveable Bond, or for payment of money, with a Clauſe of Regiſtration.

I A.B. be the tenor hereof, Grant me to have borrowit and receivit really, and with effect in numerat money, at the making hereof from *C. D.* all and aill the ſomm of ane thouſand Merks *Scots*-money, whereof I hold me well content ſatisfied and payed; and I exoner quyte clayme and ſimpl' diſcharge the ſaid *C. D.* his Airs, Executors, Aſſignays, and all vthers whom it effeirs of the ſamyne (renuncing the Exception of not numerat money, and

all

all uther Exceptions of the Law that may be proponed in the contraire) for now and ever; which ſomm of ane thouſand Merks money foreſaid as principal, with ane termes annual Rent thereof, I bind and obleis me my Airs, Executors, Intromettours, with my Gudes, and Geir, and Succeſſors, whatſumever thankfullie to content, pay and deliver againe to the ſaid *C. D.* his Airs, Executors, or Aſſignays, betwix the dait hereof, and the terme of *Witſonday* nixt to come; but longer delay, fraud, or guyle, with the ſomm of ane hundreth Merks of liquidat expenſe in caice of faillie or Regiſtration hereof in my default, by and attorn' the ſaid principal ſomm and termes annuel thereof foreſaid, and togedder therewith, togedder alſo with the ordinar annuel Rent of the ſaid principal ſomm, conforme to the general Order and Cuſtom of this Nation, zeirlie, termlie, and monethlie, during the not payment thereof after the ſaid terme. But prejudice of the Execution hereof at the ſaid terme or any terme or time thereafter, without any preceiding premonition to be made for that effect;

whereunto

whereunto I bind and oblеis me and my foresaids, in the ſureſt Form. And for the more ſecurity, I am content and conſents there preſents be *Regiſtrat* in the Bukes of the Court of Juſtice, or any other *Regiſter* that ſall be in uſe for the time, to have the ſtrength of ane Decreit of any of the *Judges* thereof interponed thereto, that *Letters* and *Executorials* of *Horning*, on ane ſimple charge of ſix days only, and vthars neceſſar may pas hereupon as effeirs and conſtitutes my *Proctor*, in witneſs whereof (written by *W. C.*) I have ſubſcrivit thire preſents with my hand all' in the day of One thouſand ſix hundred fifty ſix zeirs, before there witnes.

For the *Regiſtring* whereof, the *Perſewer* or *Plaintiff* payeth three ſhillings *Engliſh* a *Scotch* Merk whereof goeth to the *Exchequer*, and the reſidue to the *Regiſter*, the blank for the *Proctors* name, being of late time uſually fill'd up with the name any *Proctor* or *Advocate*, the *Plaintiff* or *Perſewer* ſhall make uſe of.

And are not made as our *Engliſh Statutes* or *Recogniſances*, are in the nature of a *Statute Staple* in a conſtant, legal, rational conciſe, binding and obliging form of words of one and the ſame Tenor, appointed and limited by the *Act* of *Parliament* of 23 H. 8. which ordained and gave them the force and power which they now enjoy, by theſe and no more words, *viz.* *Noverint*

The form of a Recognisance in *England*, of the nature of a *Statute Staple*.

Noverint universi per præsentes me A.B. *Armig' teneri et firmiter obligari* C.D. *in centum libri sterling solvend' eid' C. aut suo certo Attornat' hoc scriptum ostend' hæred' vel executoribus suis in* (Tali) *festo prox' futur' post dat' præsentium. Et si defecero in solutione debit' prædict' volo et concedo quod tunc currat' super me hæredes et executores meos pœna in Statuto Stapulæ de debit' pro mercandisis in eadem emptis recuperand' ordinat' et provisa. dat' die Anno Regni Regis*, &c.

But do by reason of divers Clauses and Covenants inserted into them, strangely vary and differ one from another, according to the necessity of the borrower, mistrusts of the lender, and rigorous conditions, too frequently imposed in that Nation; where they have as little *Faith* and *Trust* in one another, as they have Silver-As

To pay Two shillings of *Scotch* money for every *Teston* unpaid (their Usury and Extortions being very greatly complained of in some of their Parliaments (*a*) with all Costs, Skaithes, and Expences, and to pay the Principal money, with Expences at the *Obligees* own modification, conscience, and discretion without any Proces or Decreit interponed for the same.

(*a*) Parl. *James* the Sixt, in *Anno* 1600.

Consent to Letters of *Horning*, *Warding*, and *Poinding* (which they like so little, as they

they ſometimes expreſs it in their Bonds with a *God forbid*) upon three, ſix, eight, nine or ten days, and ſometimes upon four and twenty hours charge or warning.

Oblige themſelves, their Heirs, Executors, Bodies, Lands, Houſes, Gudes, Geir, Intromettors therein, and Debts whatſoever, in the moſt ſtrict and ſureſt form and ſtile of Bond and Obligation that can be made or deviſed, without any *remedy* or *exception* of Law, Civil, Canon, or Municipal, not numerate money, or other whatſoever, to be proponit, uſit, or alleagit, by the *Obligor* or his forſaids to the contrair.

Conſent that the *Bond* be Regiſtred in the Bukes of Counſail and Seſſions, Sheriff Courts and Bukes of *Fife*, Court Bukes of St. *Andro*, Provoſt and Bailiffs of *Edenburgh*; and have the ſtrength of a Decreit of the Lords of Seſſions.

Interdict all Alienation and Diſpoſition of Lands, without conſent had of the *Obligee*, or his Debt firſt paid, and that Letters of Publication paſs thereupon.

Oblige to pay all Coſts and Expences

which ſhall be ſuſtained in the Craving or Purſuites in ſnch quantities, as the *Obligee* and his foreſaids ſall depone upon their Oaths to be disburſed; to which Oath as onely *Judge*, and the Modification thereof, the *Obligor* refers himſelf, and admits the ſame, and to no Tryal of any other *Judge*, to be paid with the aforeſaid Principal, without any Exception of Law to be made to the contrair in *Judgment*.

With all Expences that ſall happen the *Obligee* to make upon the Recovery of the ſaid ſums, in caice of non-payment, or for Letters, Signet *Silver*, and Officers Fees upon his own conſcience, without any Dilator of Law.

Letters of Horning to be at the Mercat Croſs of *Edenburgh*, and the Regiſtring in the Sheriffs, Bukes of *Edenburgh*, with a certain ſum therein mentioned for Expences, modified and liquidat in caice the *Obligee* make any thereupon in Regiſtring the *Obligation*, and raiſing Letters thereupon or for Officers Fees or otherwiſe.

And in caſe of non payment, quite Claims, and diſpones all and haill, right,

kindneſs,

kindneſs, title, intereſt, *gude will*, and benevolence, that he or his aire, hes or may claim in certain Lands therein ſpecified, Warrands from all former Enfeoffments, with all neceſſar and ſpecial clauſes of *Warandize* as the *Obligee* will deviſe. And if he do in the contrair, the ſame ſall be of no avail and *Renunciand* the ſame, binds his Ayres, Executors, Aſſigns, Heritages, Poſſeſſions, *Kindneſſes* of Lands, Gudes, and Geir.

One in a Bond for no greater a ſum or concernment, then nineteen pounds ſix ſhillings eight pence *Engliſh*, binds himſelf to pay Coſts of Regiſtring, raiſing of Letters thereupon according to their own Modification and Declaration of Conſcience, renouncing all Priviledges and Juriſdictions, and ſubmitting in that caſe to the Priviledge and Juriſdiction of the Provoſt and Bailiffs of *Edenburgh*.

Another bindes himſelf to pay Coſts of Regiſtring, raiſing of Letters thereupon according to the Creditors own Modification and Declaration of Conſcience, or of whatſo ver *Judge* or *Judges* within

the *Realm*, *Spiritual* or *Temporal*, whereſoever he can be apprehended in the moſt ſure form of Law that can be made or deviſet, and na exception or remedy in Law to be proponit, or alleagit in the contrair in Judgment.

One for no more then Five pounds ſeven ſhillings and four pence, to Modification of expences at his own diſcretion.

Letters to be raiſed upon him perſonally, or at his houſe within eighty days.

Another renounceth all remedy of Law or other Modification.

And in a Bond for no more then a hundred marks principal money, doth voluntarily Tax, *Liquidat* and Modifie the ſum of Ten pound, as for expences of Regiſtration.

With all Coſts and Expences in ſerving the Execution for not payment of the ſaid ſum upon the Declaration of his own word.

One remits his own Juriſdiction, ſubmitting him and his foreſaids to the Modification of the Lords of his *Majeſties* Counſel and Seſſion, Provoſt and Bailiffs of

of *Edenburgh*, in whose Bukes he is content it shall be Registrate, and have the force of a Decreit.

Another bindes himself to pay Twelve shillings Scotch money for ilk shilling sterling, that sall not happen to be paid of a principal sum of Ten pounds.

One obligeth himself to pay One hundred marks money, for Costs, Skaithes, damage, expence, and interest, presently liquidate and agreed upon *ex pacto conventa*, to be sustained and disbursit by the *Obligee*, in caice of not *Timous* payment of the principal sum and Annual Rent.

And another renounceth all remedy of Law or Modification whatsoever, and bindes himself to deliver a sufficient Charter of Alienation of some of his Lands. And that if an Annuel rent sal be unpaid, a compriſing sal be led and deduced upon Ten marks for every hundred that sall happen to ryn of the said annuel rent unpaid sickly, and as sufficient as gif the *Obligee* were infeft be his Charter of Alienation, notwithstanding the *Act* of *Parliament*, or other *Lawis*, *Civile* or *Municipal*,

or

or conſuetude whatſoever to the contrair Renunciand the ſame and Priviledges thereof in that cauſe.

All or any of which as to the binding of the Debtors Eſtate, and ſecuring the Creditor, do come very much ſhort of our Securities by *Statutes* or *Judgments*; for that a *Decree* or *Judgment* upon a Regiſtred *Bond*, doth not binde but from the time of ſuch decreit upon the Regiſtring of the *Bond*, which is ſeldom or never done in *Scotland*; but upon not performance, and after the time elapſed for the payment of the money, and is many times in the hopes and expectation of ſatisfaction, one, two or many years, or a long time forborn before they be Regiſtred; our Securities by *Statute* or *Judgment* relating and binding by Law, to the very day of the date thereof, and taking place of all other Perſonal Securities of an after date, which makes the *Inhibitions* which are granted and emitted in *Scotland* upon Regiſtred or not Regiſtred *Bonds* or other *Actions Perſonal*, and *Demands* of Money or Duties made before a *Publick Notary*,

Notary, and *Inſtruments* taken thereupon, where the *Obligee* or *Perſewer* is afraid that the *Obligor* or *Defendant* will alien or make away his eſtate, to be not ſo neceſſary with us in *England*, as they may be ſometimes in *Scotland*; where to prevent the prejudice of a pretended *Creditor* (which until the *Debt* or *Demand* be proved or recovered, is little more then a pretence) with no ſmall diſgrace of the perſon and eſtate of the Debtor or Defendant, and diſturbance of his affairs and purpoſes, though it be but to ſell his Corn, Sheep, Goods or Chattels, Leaſe his Lands, or ſell any part of it for his livelihood or maintenance, raiſing of portions for children, or other neceſſary occaſions, be *bound* or *ſurety* for a friend, or to raiſe money to enable him to pay his Debts, or Publick Aſſeſſments, or Taxes. An *Inhibition* is too often ſent forth upon the unjuſt and oppreſſive deſigns or humor of the Creditor prohibiting all Contracts, Dealing, Mortgaging and Entring into any new Obligations, which all men, eſpecially Merchants and Tradeſmen cannot without great prejudice to themſelves, and their

Affairs, forbear to do in no ſhorter a Form then as followeth, *viz.*

The Form of an *Inhibition* granted in *Scotland* to ſtay orforbid the Sale or Alienation of a *Debters* Lands or other Eſtate.

OLIVER Lord Protector of the Commonwealth of *England*, *Scotland*, and *Ireland*, and the Dominions thereto belonging, To

Meſſengers, our Sreffs in that part conjunctly and ſeverally, ſpecially conſtitute, Greeting. Forſamekill as it is humbly meant and ſhawen to us be *George Fowles* of *Raterlſton*, for himſelf and as aſſignay efter ſpecified, and *Jean Surlar* his ſpous; That where the ſaid compleiner hes ſummonds and action, intentit and depending at his inſtance before our Commiſſioners for adminiſtration of Juſtice to the people in *Scotland*, againes *Alexander Nisbit* now of *Dean*, eldeſt lawful ſon and air at leaſt charged to enter air to the deceiſt Sir *William Nisbit* of *Dean*, and againes his Tutors and Curators, if he any hes for there intreſs to heir, and ſee them decernet be decreit of our ſaids Commiſſioners to make payment to the ſaids compleiners of the

the ſomm of Twenty five thouſand merkes money of *Scotland*, and ſomm of Twa thouſand five hundreth merkes money forſaid of expenſs, with the ordinar annual rent of the ſaid principal ſomm of all zers and termes bygane, reſt and awand, and zeirly and termly in time coming, during the not payment thereof, the termes of payment being cum and by-paſt conteint in ane Obligation grantit be the ſaid deceiſt Sir *Wil. Nisbit* to the ſaids compleiners of the dait the 15 day of *Jan.* One thouſand ſix hundred fiſty thrie zers, and als to make payment to the ſaid *George Fowlles* of the ſomm of Four thouſand merks money forſaid as principal, and Four hundreth merkes of expenſs with the ordinar annual rent of the ſaid principal ſomm of all zeirs and termes bygane, reſt, and awand, and zeirly and termly in time coming during the not payment thereof, the termes of payment being cum and by-paſt, conteint in ane vther Band grantit be the ſaid deceiſt Sir *Wil. Nisbit* to the ſaid *G. Fowlles* of the dait the 18 day of *November*, One thouſand ſix hundred fifty four zeirs, and

ſiclike to make payment to the ſaid *George Fowlles*, as aſſignay efter ſpecified of the ſomm of Twelff hundreth punds as principal, and Twa hundreth merkes of expenſs with the ordinar annual rent thereof bygane, reſt, and awand, and zeirly, and termly in time coming, during the not payment thereof, the termes of payment being cum and by-paſt conteint in ane Band grantit be the ſaid deceiſt Sir *William Nisbit* as principal, and the ſaid *George Fowlles* as *Cautioner* for him to Mr. *Hew Somernel* Precentor at St *Cuthberts* Kirk, and *Eliz. Steill* his ſpous, of the dait the 7 day of *December*, One thouſand ſix hundred fifty thrie zers, and aſſigned be them to the ſaid *George Fowlles* upon the Fiftein day of *November* laſt by-paſt, and als to make payment to the ſaid *George Fowlles* of certaine vther ſommes of money, principal annuals, and expenſs ſpecified in the ſaids ſummonds, as the ſamyne dewly execute and indorſat ſhawen, to our Commiſſioners for Adminiſtration of Juſtice to the people in *Scotland* Bers. And the ſaid *Alexander Nisbit* and his Tutors and Curators, if he any

any hes for there intreſs, knowing perfytely that the ſaids compleiners will prevail and obtein, decreit condemnats againes them in the ſaid mater; they in the mean time in manifeſt defraud, hurt, and prejudice of the ſaids compleiners there anent, intends as they are informed, to ſell annually Wodſet, reſign, diſpone, delapidat, and put away all and ſundry there Lands, Heretages, Tends, Tenements, Annualrents, Lyfe-rents, Reverſions, Takes, Steidings, Rommes, Poſſeſſions, Corns, Cattel, Guds, and Geir whatſummer pertaining to them, tending thereby to unable themſelfs anent the implement and fulfilling to the ſaids compleiners of the forſaid decreit efter the recovery thereof and payment, making to them of the ſommes of money, principal, annuals, and expenſs, to be conteint therein, to thire grit hurt and prejudice, without remeid be providit thereto as is alledgit.

Our will is theirfor, and we charge zow ſtraitly and command, that incontinent thire our Letters ſein ye pas and in our name and autority, inhibit and diſcharge

the

the ſaid *Alexander Nisbit* now of *Dean* perſonally, or at his dwelling, and his Tutors and Curators, if he any hes for there intreſs be open Proclamation at the Mercat Croce of *Edingburgh* and uther places neidfull, That they on na wayes ſell annually Wodſet, reſigne, diſpone, dilapidat, nor put away any of the ſaid *Alexanders* Lands, Heretages, Tends, Tenements, Annual-rents, Lyfe-rents, Reverſions, Takes, Steidings, Rommes, Poſſeſſions, Cornes, Cattel, Guds, nor Geir, nor zit make any privat nor publict Alienation, Infeffment, Aſſignation, Reſignation, Tranſlation, Renunciation, nor no vther richt, nor diſpoſition thereof, nor of no part of the ſamyne to any perſon or perſons, nor hit to contract nor take on debts, nor ſommes of money, nor make nor grant any Contract, Band, Obligation, nor no vther richt nor ſecurity theirfor, nather as principal, nor as *Cautioner* to any perſon nor perſons, nor do no vther fact nor deid, directly nor indirectly in any ſort, whereby his Lands, Heretages, Tends, and vthers forſaids, may be appryſit

pryſit or eviſtit fra him in defraud, hurt, and prejudice of the ſaids compleiners anent the implement and fulfilling to them of the forſaid decreit eſter the Recovery thereof and payment, making to them of the ſommes of money, principal, annuals, and expenſs, to be conteint therein; and als that ze in onr ſaid name and autority inhibit and diſcharge, all and ſundry the people and lieges of this Nation, and uthers whom it effeirs, be open Proclamation at the ſaid Mercat Croce of *Edinburgh* and vther places needful, That they nor none of them on na wayes preſume nor take upon hand under whatſoever colour or pretext, to buy, bloketake in Wodſet for longtakes or ſhort, for maill mailfrid, or otherwayes convene contract or make paction with the ſaid *Alexander Nisbit* and his ſaids Tutors and Curators anent the richt of the ſaids Lands, Heretages, Tends, Tenements, Annual rents, Lyferents, Reverſions, Takes, Steidings, Rommes, Poſſeſſions, Cornes, Cattel, Guds, Geir, and vthers forſaids, nor receit fra him any privat nor publick Alienation,

tion, Infeffment, Aſſignation, Reſignation, Tranſlation, Renunciation, nor vther richt nor diſpoſition thereof, nor of no part of the ſame to any perſon nor perſons, nor lend to him any ſommes of money nor receive fra him any Contract, Band, Obligation, nor no vther richt nor ſecurity therefor, nather as principal nor as *Cautioner*, nor meddle with him thereanent, directly nor indirectly in any ſort, whereby his Lands, Heretages, Tends, and vthers forſaids, or any part thereof, may be appryſit or evicht fra him in defraud, hurt, and prejudice of the ſaids compleiners as ſaid is certifying them, if they or any of them failly or do in the contrair, the ſamyne ſall be null and of none avail, force, ſtrength nor effect with aill that may follow, thereupon conform to the Laws and Practiſe of this Nation; and that ze pas within forty days nixt efter the execution hereof, and cauſe regrat' theſe our Letters with the execution thereof conform to the *Act* of Parliament, and ſiclike, That ye in our ſaid name and autority, ſeaſe and arreſt all and ſundry the ſaid *Alexander Nisbit* his reddieſt

dieſt Guds, Geir, Cornes, Cattels, Maills, Fermes, Cuſtomes, Caſualties, Profeits, Ducties, and vthers whatſoever, pertaining to him, all to remain under our ſure ſens and areſtment at the inſtance of the ſaids compleiners, ay and while ſufficient caution be fundacht in the *Bukes* of our Court of Juſtice, That the ſamyne ſall be furth comand to them as Law will according to Juſtice, becauſe our ſaid Court hes ſein the dependance above mentionat execute, as ye will anſwer to me thereupon. The which to do, we commit to you joyntly and ſeverally, our full power be thire our Letters, delivering them be you dewly execute and indorſat againe to the berer. Given under our Signet at *Edinburgh* the twentieth day of *February*. 1657.

By Warrand of the Commiſſioners for Adminiſtration of Juſtice to the people in Scotland.

FH
MVSEVM
BRITANNICVM

CHAP.

CHAP. XIII.

Of the manner of proceeding heretofore uſed upon a Scotch Moveable Bond, before it was put in execution.

BUt when ſuch a *Moveable Bond* comes to be Regiſtred, it is (unleſs the fury thereof be afterwards by a Bill of *Suſpenſion* prevented or ſuſpended) more fierce and rigid then our *Statutes*, *Recogniſances*, *Decrees*, and *Judgments*, for that it *endeavors* to carry with it a *Releaſe* and *Renounciation* of all Pleys and help, and ſubjects the *Obligor* or *Debtor* to an *Vtlary* or *Horning*.

To avoid which, and give lawful warning to the *Obligor* to appear and ſee the *Bond Regiſtred*, or ſhew cauſe why it ſhould not, there being many things which might either be, or happen in the *Circumſtances* of the Caſe, or ſome tranſactions at the time, or before, or ſince the making of the *Bond*, betwixt the *Obligor* and *Obligee*, as all

all or part of the money paid, ſome other ſatisfaction made, or alteration of the fact or matter betwixt them, from what it was at the firſt, deſerving a care and conſideration of Juſtice before they proceed to make ſuch a tearing *Decreit* or *Execution* upon it.

The *Lords* or *Court of Seſſion*, did no longer ago then about the year 1589. as is not ſeldom to be ſeen in their Bukes and *Records* of that time, before the paſſing or making of a *Decreit* upon ſuch *Regiſtrat Bonds*, uſually make out a *Summons* or *Letter* to the *Obligor*, to appear and ſee the *Bond Regiſtred*.

The Entry or Awarding whereof appears to have been in this form, *viz.*

Nevertheleſs the Obligor no ways compeiring before the ſaid Lords of Counſail, to conſent to the Regiſtration of the ſaid Obligation in the ſaid Bukes or anent, the charge given to him to have compeired before the Lords of Counſail at a certain day bygan. To have heard and ſeen the ſaid Obligation producit before the Lords to be ſeen

and considered; and being seen and considered to hear and see the said Obligation Registrat, and Executorials to be Decreit, or else to have alleagit ane reasonable cause, why the same sould not be done, as is conteined in the said Letters or Summons with certification, that if he fail, the Lords would determine without him; and being ofttimes called, and not compeiring, the Lords decree the Bond to be Registrat and have the force of a Decreit.

And then follows the Copy of the Bond in *Iisdem verbis* with the *Judgment* again repeated, *Because the said Obligor was lawfully summoned and not compeirand, &c.*

Which is but agreeable to right Reason and Justice, and conform to that which seems to have been not long after allowed of in that Nation in the year 1592. by an *Act* of *Parliament* of K. *James* the Sixt[b], ordaining, *That any debt* De liquido ad liquidum, *instantly verifiet by Writ or Oath of the party before the giving of the Decreit, should be admittit be all Judges within the Realm be way of Exception, but not after the giving thereof in the Suspension or Reduction.*

[b] Parl *James* the Sixt, *Anno* 1592.

duction of the ſame Decreit; which debarring all ſuch Exceptions or Compenſation after the making of the Decree, declares certainly the more reaſon and neceſſity to ſummon and hear the Defendant or Obligor before the Decreit be entred or given againſt him.

For (if there were nothing elſe) *Aliqua ex Jure Civili* [c] *mora debitori ut ſe expediat indulgetur*, by the Civil Law (by which very much of their practiſe is guided) ſome reaſonable time is (ſaith *Craig*) to be given the Debtor to provide ſatisfaction. And might as well allow it to be reaſonable as they do now, in caſe of the death of any of the *Obligors* or *Obligees* before the Regiſtration of the *Bonds*, or upon tranſporting or aſſigning them over, as they do frequently there to one another, or of ſummoning in the Heirs, Executors, or Adminiſtrators, of the Obligors (the Heirs having a year and a days time to deliberate, whether they will enter or take upon them the Heirſhip, and the Executors or Adminiſtrators half a years time of reſpite and quiet allowed them

[c] *Craig.* l. 3. Feudorum. Dieg. 2.

them before any proceedings (which we do here immediately) can be had againſt them;) or of any Grant made by the King or State, of forfeited Goods or Lands upon *Horning* or *Utlary*, after the *Bond Regiſtred*; as in the caſe of Captain *Archibald Beton*, and Sir *Robert Graham* in *An.* 1631. that a Summons ſhould be raiſed to hear and ſee the *Bond* Regiſtred, and the *Decreits* made thereupon.

And may ſeem to be the more neceſſary, in regard, that by the dictates and rules of the Civil Law, [d] *Nemo debet condemnari niſi priùs datâ ſibi termino ad ſe defendendum*, No man ought to be condemned, but after a time firſt given to defend himſelf, [e] *Proceſſum ab executione hanc inchoandum nec inſtrumenta obligationum abſque ſtrepitu judiciorum plenario effectui ac operationi demandanda* [f] *& quantumvis publicè confecta proferantur quæ quidem probationem probatam inferunt paratam tamen non operantur executionem deducentia ſaltèm ad portum & ſententiam nec ſunt ſententia ipſa.* The firſt proceſs or proceeding ſhould not begin with Execution nor

d *Baldus Allega. l. in ſect. ſi ad diem ff de re mil.*

e *L. 1. & c. 2. de Execut. rei judic. l negantes 9.*

f *Baldus in l 1. c. de execut. rei judic. Petri Heig. parte 2 quæſt. 7. n. 17.*

nor *Bonds Regiſtred* or *Guarentigiated*, be put into preſent execution before any proceedings had in Judgement; for although they are exhibited and inferre a full confeſſion and proof, yet they ſhould not immediately paſs into execution, but are to be onely as inducing a ſentence, but not to be as the ſentence it ſelf, otherwiſe it will be *Contra jus commune* againſt the Law, ſaith *Matth. Coler de Proceſſe Execut. part.* 3. *cap.* 1. *n* 91. Cited by *Hans Jacob van Ryſſel* in his *Aſylum & Generale debitorum*; the rather for that ſuch *Regiſtred Bonds* are not immediately Regiſtred, and made as our *Engliſh Statutes* or *Recogniſances*, in the nature of a *Statute Staple*, are by *Act* of *Parliament* atteſted with the *Publick* and *Office Seal* and *Subſcription* of the *Lord Chief Juſtice* of the Court of *Upper Bench*, or *Lord Chief Juſtice* of the Court of *Common Pleas*, or of the *Major* of the *Staple*, and *Recorder* of the City of *London* in their abſence, accompanying the *Obligors* own *Seal* and *Subſcription*.

§ *Aſyl. debit.* § 2. 13, 16, 17.

Nor as our *Recogniſances* are in *Chancery*

very acknowledged before, and ſubſcribed by a Maſter of *Chancery*, and limitted to the *Inrolment* within ſix moneths, or to have their binding force at the very inſtant, or from the day of the date thereof.

Wherein our *Engliſh Laws* are ſo wary and equitable, as upon a *Recogniſance* inrolled in *Chancery*, or any other Court, having power to do it, a *Scire Facias* is upon not performance firſt to be awarded againſt the *Defendant* or *Cogniſor*, to ſhew cauſe why Execution ſhould not be awarded againſt them, the Statute of *Weſtminſter* the ſecond h, in *Anno* 13 *Edw.* 1. ordaining, *That in Judgements and things recorded where the Kings Court may without offence of the Law execute their Authority, they ſhould from thenceforth have ſuch vigor, as they ſhould not need to plead for them, but have execution if the Judgment be freſh, that is to ſay, within the year; but if it were at a further time paſſed, a* Scire Facias *ſhall be awarded to warn the Defendant, that he be before the Juſtices at a certain day, to ſhew if he have*

h *Weſtm.* 2. 13 *Ed* 1. *c.* 45. *Brook debt.* 10.

any

any thing to ſay, why execution ought not to be.

To which, if the Defefendant, being lawfully ſummoned, do appear, he is by the conſtant practiſe and allowance of our (*i*) Laws, to plead any matter happening after Judgment, as a Releaſe, payment of the money, and the like.

(i) *Coke* upon *Littleton* 290. *Dier* 148. *Coke* 3. *Reports* 12.

CHAP. XIV.

Of the new manner of proceeding upon a Regiſtred or Moveable Bond of Scotland, *and the putting the ſame in Execution.*

BUt that ſo neceſſary a courſe formerly held in *Scotland* of ſummoning the *Obligors* to ſhew cauſe why their Bonds ſhould not be Regiſtred, and a *Decreit* and *Executorials* paſs thereupon, being laid by and diſuſed, either by that latitude of power which was given to the Colledge of *Juſtice*, or *Lords* of *Seſſion*, by K. *James* the Fifth, who ratifying their Priviledges, and confirming *all that were granted, or to*

he granted by the Pope, did by *Act* of *Parliament* in *An.* 1540 (*k*) give power to the *Preſident*, *Vice-Preſident*, and *Senators* of the ſaid *Seſſion*, or *Colledge* of *Juſtice*, *to make ſik Acts*, *Statutes*, *and Ordinances as they ſall think expediens for ordering of Proces and haiſty expedition of Juſtice*, or by ſome other way or courſe of practiſe.

(*k*) Parl. *James* 5: *An.* 1540:

The Defendant is againſt the minde and equity of the *Civil Law*; which enjoyning a care of equity, did in former times give Defendants (*l*) three hours for their time of pleading, when it gave the Plaintiffs but two; and allows many things to the Defendant, *Quæ actoribus non licet multóque favorabilior eſt cauſa rei quam agentis*, which it doth not the Plaintiffs; and is more favorable to the cauſe of the Defendant, then of the Plaintiff; is after the *Bond* Regiſtred, left to the cruel perſecution of his Creditors, by taking out Letters of *Horning*: Which no longer ago then when their learned *Craig* wrote his Book *De Feudis*, which was ſome few years after the year of our Lord 1604. were four in number, and according to their Law, to be

(*l*) *Forſterus* Hiſt. Juris Civilis, cap. 27. *Favorabiliores*, F. de Reg. Jur. c. Cum. Jura eod. tit. lib. 6.

be iſſued out one after the other, whereof the firſt was to command the Debtor, under the pain of *Rebellion*, that he pay the money; the ſecond in default thereof, charging him to do it *Sub pœnâ cuſtodiæ & carceris*, under pain of impriſonment; which being not done, a third was directed unto him, requiring him to render his body to a particular priſon therein named, within three days (it being heretofore an ancient cuſtom of the people of that Nation, as well in *Criminal* as *Civil Actions*, upon the command of the *Magiſtrate*, to render themſelves voluntarily to any *Priſon* or *Caſtle* which was appointed them, though they could many times be content for fear of a *Surſeit* upon Obedience, to make what ſhift they could afterwards to break the priſon, and get themſelves at liberty.) And a fourth in default thereof warned him, that unleſs he pay it within three days after, he ſhould be denounced as a *Rebel* and *Outlawed*: After which ſeveral Letters or Proces formally returned by the *Meſſenger*, that he ſummoned him at his dwelling-houſe, and not meeting or ap- *Litteræ quatuor formarum.*

prehending him, *Knocked, six swere knocks at the zet or door of his dwelling place, and affixit the Proces or Instrument thereof.* If he then fail to do it, or to appear and give Bail or Security, and put in his Exceptions (to which the *Creditor* is to attend and reply, if there be any neceſſity) or give ſatisfaction to the party or *action*, he is at the *Mercat Croſs* of the *Chief Town* or *Borough* of the *Juriſdiction*, by *Tooting* or *Blowing* of a *Horn* three *Blaſtis*, denounced a *Rebel* or *Outlaw*, which forfeits all his *Moveables* preſently, and his *Lands* and *Real Eſtate* within a year and a day afterwards; out of which, either *Moveables* or *Immoveables*, the *Creditor* at whoſe inſtance he was *outlawed*, is to be ſatisfied his principal intereſt and expences.

Which more then neceſſary favors to *Creditors*, and ſeverities to *Defendants* or *Debtors*, by ſuch ſhort and impoſſible prefixions (& ſome way or other, from thence conveyed hither to our *Maiſters* of the late intended *Syſteme*, or *Reformation* of our *Engliſh Laws*) may well be no leſs then terrible, when they ſhall be *Outlawed* or *Horned*,

ed, and have no other name or favor given them then *Rebels*, which is appropriate to the worſer ſort of men and offenders, and ſo not to be exempted out of their *Act* of *Parliament* of *James* (*m*); the firſt laying a penalty upon all that hearand the Kings *Horn*, followed not the *Out-horn*; and commands that no man do favors to any, being at the *Horn*, under pain of death, and confiſcation of all their *Moveable goeds*, that an *Inventure* be made of their *goods*, the *Horning* and *Outlawry* regiſtred in every *Sheriffdom*, proclaimed at the *Mereat Croſs* of the head *Burgh* of the *Shire*, affixing a Catalogue of their names upon the *Mereat-Croſs*, and in the *Tolbuith*; that gyf any of them have any *Action* to purſue, they may be repelled *Ab agendo*, that they be certified to the Kings *Theſaurer* or his Clerk, who ſall be holden with all diligence to raiſe *Letters*, and the *Sheriffs* cauſe uptake the *Eſcheats*, and if the *Sheriffs* cannot take them in their own bounds, to make *Denounciation* to the adjacent *Sheriffs* to take them. And if the *Sheriffs* will not, or may not, that then ſome Noblemen of gude power within

(*m*) Parl. 6. *James* 1. *cap.* 98. Parl. 9. *James* 5. *cap.* 110. Parl. 7 *James* 5. *ca.* 97. Parl. 6. *James* 6. *cap.* 75. Parl. 12 *James* 6. *cap.* 124.

in the *Sheriffdom* be ordered to convocate his Highnes *Lieges* in weirlike manner, to paſs and ſee the command of the Letters executed really and with effect, before they depart off the ground quhair the ſaids *Eſcheit guds* remains, and brings them within the *Act* of *Parliament* of *James* the Sixth, in *Anno* 1592 (*n*) for puniſhment of *Reſetters* of *Traitors* and *Rebels* at the Kings *Horn*, whereby none are to receive, ſupport, give meat, drink, or lodging, or any relief; but to uſe all diligence to diſcover and take them, the *Outlawries* being there not ſo eaſily remiſſible, pardoned, or reverſed as *Outlawries* are in *England*, upon *Error*, *Bail*, and appearing to anſwer the *Action*.

(*n*) Parl. *James* 6. *Anno* 1592.

CHAP.

CHAP. XV.

Of their ſudden Outlawing or putting men to the Horn, and the ſhort days and prefixions given them.

AND yet as ſevere as that is, and upon ſo ſhort a warning, the Defendants are now by a late way of practiſe, allowed to have but one ſingle Letter of *Horning* upon fifteen days, or the like, too ſhort a notice, though by an *Act* of *Parliament* made in the year 1592. complaining, *That the multitude of Rebels* (or *Outlaws*, for ſo they term them) *in Civil Cauſes, was one of the great cauſes of the confuſion which happened by it, it was ordained, That it ſhould not be leſum to denounce any particular perſon to the Horn upon general Letters, except gyf the ſaid party be firſt lawfully and ſpecially called to hear and ſee the ſaid Letters direct againſt him for a ſpecial and certain duty or fact:* And by another *Act* of *Parliament*, declaring, *That many people inhabiting the North part of* Scotland *were*

often-

oftentimes drawn to great inconveniencies by charges of Horning at Edenburgh, *upon ſix days warning Swa as by their diſtance of habitation, there was no poſſibility of ſatisfying ſuch charges (or ſhort prefixions) it was* Statute, *and ordained, That no Letters of Horning ſhould be direct againſt any perſons dwelland be North the Water of* Die, *upon ane ſhorter ſpace then fifteen days, and the Hornings upon any ſhorter ſpace, to be of no avail.*

The learned in their *Laws* beſt knowing whether the ſhortning of that before too ſhort a way of their Proceſs and Horning in favors of the Plaintiffs or Perſewers, who are not ſeldom the great *Nimrods* or *Perſecutors* of thoſe they have ſo ſtrong a tye upon, as a *Moveable* or *Regiſtred Bond* is, may be ſupported by that their *Act* of *Parl.* in *Anno* 1647. diſcharging the Letters *Quatuor formarum* or four Forms, being the then uſual Proces of Horning, in Caſes of Compriſing, againſt the Superior of the Lords compriſed, infefting the Compriſers therein, and ordaining, *That no* Letters *and charges raiſed, or*

to

to be deduced, ſall be execute againſt the Superiors of the Lands, and others compriſed, by infefting of the ſaid Compriſers therein, until upon ane ſimple days of Twenty ane days allanerly quilch the Eſtates, declared to be alſo ſufficient in all reſpects, as the former charges given upon compriſing, be virtue of the Letters *of Four Forms, whilks are diſcharged in time coming*; or be not contrair to the *Proviſo* of that *Act* of *Parliament* (o) made by King *James* the Sixth, in *Anno* 1584. for the better execution of *Decreits, Declaring how it was heavily mean'd by his Majeſties Subjects, that after tedious, chargeable, and longſum purſuit in obtaining of their Decreits, the malice of perſons had ſwa increaſed be making of ſimulat and falſe aſſignations of their moveable gudes, fraudful and private alienations of their poſſeſſions, Lands, and Heretages, that the Execution of all Decreits given be quhatſumever Judges within his Hieneſs Realm, althocht obteined be maiſt longſum Proces wer ſwa delayed, that parties war in na better caſe after the obteining of the ſaids Decreits, nor gyf the ſamin had not been given, did Statute*

(o) Parl. James 6.

and Ordein, That for Execution of all Decreits as well given be the Lords of Seſſion, or be quhatſumever Judges within His Majeſties Realm in any time bygane, as to be given in time coming, Letters as well of Horning, as Poynding the ane nocht prejudicial to the uther, ſall be direct at the will and pleaſure of the party obteiner of the Decreit; Providing always, That conſideration be had upon the ſpace and days of the charges, and that according to the diſtance of the defenders places, and the quantities of the ſums conteined in the ſaids Decreits.

But how ſhort or ſwift ſoever the prefixions are, or by what way ſoever introduced, the *Horned* or *Outlawed Debtor* is to be put to his ſhifts, and hunted with the *Horn*, and a *Hue* and *Cry* after him; Letters of *Caption* are to be immediately ſent to the *Magiſtrates* where the *Debtor* liveth, to take his body into cuſtody. And the *Creditor* may take out Letters or Proces (like our ſpecial *Capias Utlagatum*) for Poynding of the *Debtors* moveable goods and geir: and if he have not goods ſufficient, to compriſe his Lands by a Proclamation made by the

the Officer or Meſſenger (who as our *Sheriffs*, is to be as a kinde of a *Judge* in it)

an Aſſize of Fifteen or thirteen men impanelled at the choice or *option* of the Perſewer, and a Clerk and Members of that little Court, as it were conſtituted wherein the defender is *Ad omnes ſuas exceptiones & defenſiones admittendus* to uſe all Exceptions and Defences againſt the Proclamation or Publication of it, the Officer, Witneſſes, Jury, or Clerk, as that they are his enemies, or of kindred, or affinity to the Creditor, or that all the ſolemnities of the Law were not performed, after diſcuſſion whereof, and interlocutors againſt the Proponer, the Creditor Petitioning to proceed to the Compriſement, a *Citation* is granted againſt the Debtor to ſhew cauſe why the Compriſing ſhould not go on: Whereupon he is again in *Omnibus ſuis exceptionibus audiendus* to be heard in all his Exceptions; or if another appear and claim (which is ſometimes ſet on by the Debtor (*p*), and makes as Mr. *Craig* ſaith, a fierce deſpute betwixt the Plaintiff and him,) and any title or preſumption of it

(*p*) *Craig*, l. Feud. Deig. 2. 334.

appear, it is not to be determined by these *Judices Pedaneos*, ordinary or inferior Judges, but by the superior; who by the Laws of *Scotland*, have in their Court of *Sessions*, power to admit and determine Exceptions *Contra rem Judicatam*, either in the Decree of their own, or any inferior Court.

After which Compriſements, or Extent of Lands or Immoveables, the Plaintiff is not ſure alſo to eſcape very many troubles and difficulties, which are to be gone over before he can arrive to the recovery or getting of his money, as in the Debtors pleading, That he had Moveables or Goods ſufficient to pay the debt, which by an *Act* of *Parliament*, *Jac.* 3. *Parl.* 5. *cap.* 36. *Quoniam* Attach, *cap.* 49. and by the Civil Law (*q*) cited by *Skene*, *Sould be firſt ſearched and ſocht*; *and gyf the ſame be not found equivalent for payment of the debt, ſa meikil as is found ſould be poynded* Pro tanta vel rata debiti; *and the Debtors Lands compriſed for the reſt.* Procuring Letters or Warrants from the Lords of *Seſſion*, to the *Sheriff* and *Jury*, to proceed in the Compriſe-

(*q*) *L. à Divo Pio* 15. *L debitoribus* 31. *F. de re Judic. l. Etiam eos quos* 9. *De execut. rei judic.*

Compriſement, though others claim the Land, or be in the poſſeſſion thereof, or that it be fraudulently ſold, aliened, or Woodſet, after an *Inhibition* (which may have many Exceptions (r) *As want of ſolemnities in the publiſhing, was not regiſtred within forty days, the debt is not due, or that the Debtor is ſufficient, and the like*) or that the Mortgage was redeemed, and after kept on foot *Nam ſine his literis ſive warranto* (which we in *England* are not upon *Elegits* or *Extents*, put to the trouble of) ſaith their *Craig*, (s) *Ut noſtri in foro loquntur vix ſolent ad Auctionem ſive licitationem procedere qui Auctioni præſunt*, Without ſuch Letters or Warrants as the Scotiſh Laws, ſay the Sheriff, ane Jury will not proceed to the Extent or Compriſement.

(r) *Craig.* l. 1. Feud. Dieg. 11.

(s) *Craig.* Feud. lib. 3. Dieg. 2.

The charges whereof, in ſuch a vexed or long winded Controverſie, as that may happen to be, will not be a little ſwelled with the *Twelve pennies* in the pound allowed (being more after the rate of their money, then is upon our *Extents* in *England*) upon every Decreit, and paid to the Officer

Officer of the Court upon Compriſements, by an *Act* of *Parliament* made by their King *James* the Fourth, confirmed by the late King *Charls* in a *Parliament* of the zeir 1633 (*t*), in favor of the *Lords* of *Seſſion*, who have an allowance alſo of *Ten ſhillings* of every pound Land of old Extent, pertaining to the *Temporalty* or *Laicks*; and out of the *Spiritualty* or *Clergy*, and the *Boroughs*, the juſt *Taxation* accuſtomed when the *Temporal Eſtate* was ſo ſtinted (whereas the Judges of *England* are yearly paid their *Penſions* out of the particular Revenue of the *Supreme Magiſtrate*) to be, and remain to them and their Succeſſors, for the inlarging of their Proviſion, and defraying of their charges, in reſpect of their attendance and loſs of time in their other affairs.

(*t*) Act of Parliament in *An.* 1633.

Which Twelve pennies in the pound, and Fees upon the Compriſement, is uſually ſold or aſſigned by the Officer to the Perſewer or Plaintiff, and reckoned and caſt up in his principal debt, charge, and trouble alſo of their many Petitions and Supplications, Letters or Writs

of

of Summons of Redemption, Summons of Declarator, Summons of removing to Vaſſals or Tennants, or to pay *Mails* or Duties, and the like, upon too many circumſtances of the Fact or ſolemnities of the Law, to all parties intereſſed, as over Lords or Superior (*u*), and ſometimes Superiors of the Superior, to inveſt the Compriſer, and to know how men hold their Lands, and the like; and upon every thing almoſt which is ordered to be done by either of the parties (which in *England* the ſerving onely or notice taken of the order doth ſupply) ſeveral Decreits and Interlocutors upon ſingle points or branches of the Cauſe, frequent charges of Letters of *Horning*, upon every default (*w*) or contumacy of either of the parties charges of Signet and Preceipts, of Saiſing Doubles or Tranſcripts of many of their proceedings, to make up, to keep by them as Records of their Courts; and a great deal more of trouble and charge, if there be Sureties in the *Bond* (*x*); for that they are not oblieged to compeir in the abſence of one another, nor to pay of their proper Gudes (*y*),

(*u*) *Craig*, l. 3. Feudor. Dieg. 2.

(*w*) Stat. *Robert* 1. c. 29.

(*x*) Parl. *William*, cap. 10.

(y) *Quon. Attach, cap. 17. Second Stat. Robert, c. 10.*

Gudes (y), ſa lang as they may ſhew the principal Debtor is ſufficient and ſerviceable.

Howſoever this their ſo binding kind of *Bond*, as ſome of their Obligors do perhaps intend it to be when they make it, or borrow money, is not able to chain up the neceſſities of the Debtors, and the many *Pleys* which they make unto it, or reſtrain the *Judges* from doing their duty in judging according to Law and Equity, or giving them relief when they ask, or make it appear that they ought to have it.

CHAP,

CHAP. XVI.

Of their Remedies ſought and obtained by Bills of Suſpenſion.

FOr upon any matter of grievance or indirect gaining or making uſe of the *Bond*, any Collateral or other Covenant, Promiſe, or Tranſactions betwixt them, ſince the making of the *Bond*, or any thing pertaining thereunto, or which emerged, or was newly come to the knowledg of the Obligor (z), as finding ane Acquittance of money paid, or the like; or if that will not ſerve the turn, he may upon any other colourable pretence or neceſſity of purſuit or Proces, upon giving in of caution or bail to obey the principal Decreit to be given againſt him, if the Lords of *Seſſion* ſhall upon diſcuſſion of the caſe, finde the Reaſons or Allegations not to be Relevant, exhibit his Bill of *Suſpenſion*, (if neither of the parties, or their purſes, be not before that time tamed or brought to reaſon) into the Court of the Lords of *Seſſion* (which

(z) *Skenes* Form of Proces before the Lords, *cap.* 36.

from a Court of ſeveral Laws, Civil, Canon & Common, immediately then becomes to be a Court of *Chancery*) upon as many ſuppoſitions and ſurmiſes, as the nature of the buſineſs, or any pretenſions can almoſt poſſibly permit or ſuggeſt unto them, witneſs amongſt many other which might come in the company of it, a Bill of *Suſpenſion* brought the Tenth of *October*, 1656. by *Richard Matheis* Indweller in *Edenburgh*, againſt *Thomas Cartwright* Brewer, in *Leeth* to be relieved upon a Bond, dated in *March* before, of ſeven pound fourteen ſhillings ſterling mony, and three pound ſterling money of expences Regiſtrate the third day of that *October*, which had put the Compleiner within ane certain ſhort ſpace to the *Horn*, wherein he alleageth, *That he owed no money, but the granting of the Bond was for ſome Beer, which the Charger or Obligee alleaged ſhould be ſufficient, through the inſufficiency whereof he came ſhort Threttie ſhillings ſterling, paid him Two and twenty ſhillings ſterling in told money, that two ſhillings ſterling was owing to the compleiner, beſides what was*

Bill of *Suſpenſion.*

for

for meat and drink, furnished be him and his wife, since the date of the Bond, extending in the hail to the sum of Twa pounds fourteen shillings sterling, hath Action and Cause intentit and depending at his instance before the Commissioners at Edenburgh, *against the Charger for repetition and payment of the said sum of Threety shillings sterling that he came short of, and the said Twa and twenty shillings sterling of payed money to him aforesaid, and the said Twa shillings sterling, and for meat and drink; whereunto the said Compleiner will undoubtedly prevail, as the libellit summons raised at the instance of the said Compleiner, and depending at his instance duly execute, shown to the Commissioners for Administration of Justice to the people of* Scotland *has testified, which sowe of Twa pounds fourteen shillings sterling, he was content to compence and allow in the first end of the sums charged. Which compensation and retention, the Compleiner ought to have in his own hands* De liquido in liquidum, *conform to the Act of Parlement made anent compensations, and that the said* Thomas Cartwright, *and his Factors and doers*

was not onely at compt and reckoning made between them within Fifteen days laſt paſt, content to allow the Compleiner in the firſt end of the ſums charged, but alſo to accept Twa ſhillings ſterling every fortnight, till he was paid the whole ſum, and faithfully promiſe not to put in Execution the ſaid Bond for the remainent of the ſaid ſums, upon the conditions aforeſaid, which the Compleiner offered to do as ane Teſtificate under the hands of certain famous Witneſſes teſtified and inſtructed, as the Charger cannot deny upon his Oath of Verite; *whereunto if need be, the ſaid Compleiner is content to refer the ſame Simpliciter, whereby the ſaid Commiſſioners may perceive how unjuſtly the ſaid Compleiner, knowing nothing but honeſty, is chargit for the ſaid haill ſums be the ſaid Charger and his Factors and Doers, and in Law and Juſtice cannot be lyable thereunto: And likewiſe, that he did but put his mark to the ſaid Bond, and it is ſince vitiat and another procured to ſign and ſubſcribe it, as for the Compleiner who did never give conſent thereunto; ſo that the real truth is there is knavery in the ſame; for ſince the Regiſtration*

tion thereof Robert Wilkenſon *Meſſenger, confeſt to the Compleiner, in preſence of famous Witneſſes, that it coſt him above Ten ſhillings ſterling to regiſtrate it, whereas the ordinary fee is but three ſhillings ſterling; and therefore upon Caution or Sureties given and mentioned in the Bill, Prayeth that the Letters of Horning, Poynding, and Arreſtment, may be ſuſpended, until further diſcuſſion*, which was done accordingly.

By which the Execution of the *Decreit*, being ſuſpended until the Reaſons of the Suſpenſions, ſhall be finally diſcuſſed and decided, beſides the Reaſons and Allegations conteined in the Bill of Suſpenſion, the Lords may for reaſonable cauſes moving them, grant licence to *eick*, and reform the Reaſons of Suſpenſion, as they uſe to do, ſaith Mr *Skene* (*a*), to Widows, Pupils, Strangers, Pure-folk, and miſerable perſons, worthy of pitty and compaſſion; which with other helps which the diſtreſſed Debtor is enforced to make a ſhift for, what with the terror and tearing of their Regiſtred Bonds, which in number arevery diſproportionate to their Bills of Suſpenſion,

(*a*) *Skenes* Form of Proces before the Lords of Seſſion, *capi* 34.

Suſpenſion, every man being unwilling and afraid to enter into ſuch unmerciful Bonds) or by the accuſtomed and fierce proſecution of the Creditors of that Nation, upon other Bonds or Actions, every Seſſion or Term is not without ſome Thouſands of Bills of Suſpenſion; which being of the nature of our Bills in Chancery, may be ſomething the more neceſſitated, for that the Defendants to them have not the aid of *Demurrers*, or to imleage, as may be here in *England*, that the Debtor may have a Remedy or Defence at *Law*, being by their Covenants and Bonds in *Scotland*, either debarred or not allowed it there againſt their Bills of Suſpenſion, which have ſo uncertain and little a diſpatch, as many Creditors have not been a little troubled or delayed with them.

Which long diſcuſſions and proceedings, even upon their Regiſtrat Bonds which they intend, and would perſwade to be the ſhorteſt (their Actions upon other Bonds, or where the ſums of money are not *liquidate*, being by their Exceptions, Accompts, and trouble and charge of *Auditors*, made

to

to be a great deal more long and tedious taking in of all that lies in the way, clearing of circumſtantials, and every little part of what is or may be objected or pretended too uſual in the practice and cuſtoms of the *Civil* and *Canon Law*, and giving ſmall or little charges to the Victor in that and all other proceedings, though an *Act* of their *Parliament* in *Anno* 1582. expreſly charges the contrary, are very often handed and lead by their Suiters from the bottom to the top of the ſtairs of *Contention*, muſt needs be more in a Court compoſed and made up, as theirs is of the *Civil Law*, brought for want of Municipal Laws by their King *James* the Fifth (*b*) out of *France* (where the cuſtoms (*c*) of the ſeveral Provinces of *Burbonnois*, *Avergne*, *Comte de la Marche*, and Dutchy of *Bery*, and many other parts of *France*, do very much reſemble, and ſeem to be the parents of that way, or manner of Regiſtring and proceedings, though not ſo much or frequently, or with that fierceneſs or ſuch ſhort prefixions as are in *Scotland*) and ſo much of the *Canon* or *Jus Pontificium* (*d*) as was neceſſary to attend a Court, whoſe *Judges* until of late, were a great part Clergimen blended and intermingled with a *Chancery*, or a kind of Court of *Equity*, ſome part of an *Exchequer* or Court of *Revenue*, and with ſome of their own Laws, Cuſtoms, and Statutes

(*b*) K. *James* the ſixth his Speech to the Parliament of *England*, concerning the union to be betwixt *England* and *Scotland* in *An.* 1607

(*c*) 2 *Tome. Cuſtomes generalles & particulieres du Royaume de France & de Gaulles.* c. 13. 211. tit. 9. cap. 13. 255. 27.

(*d*) *Craig.* l. 1. Dieg. 2 & 8.

Statutes, which for the moſt part were word for word borrowed from our *Glanvil*, (*t*) and ſeveral Acts of our Engliſh Parliaments added to them, then are or can be ordinarily in one ſingle Court of Law in *England*, which hath no ſuch intermixture or *medly* in it.

(*t*) *Vide* 2. Stat. *Robt.* 1. made in the raign of our King *Ed.* 2. *Quia Emptores terr. & vide* Stat. *Robert* 3. made in the raign of our K. *Henry* the Fourth, almoſt the ſame with that of our 3 *Ed.* 1. *ca.* 15. who are Bailable, *&c.*

Which may *Ut ex ungue Leonem*, and *Ex pede Herculem*, as the bigneſs of the Lion by his Paw, and of *Hercules* by his Foot, tell us what to think of the quick diſpatch of the Scotch Laws, which a noble Earl of this Kingdom, with a coſtly experience, and a charge of two Engliſh Advocates and civil Lawyers, ſucceſſive maintenance, and continual attendance at *Edinburgh* at 100 or 120 *l. per annum*, for 16 years, together without intermiſſion, many Letters of Interceſſion written to the Judges or Lords of Seſſion, for a diſpatch (a Cuſtom there expected and entertained, but abhorred and diſcountenanced by our Engliſh Judges) and two or three Letters of recommendation by his Majeſty, can witneſs were ſlow enough and notwithſtanding a continual proſecution was not in a looſing and very prejudicial compoſition, ended before the later end of the year 1669. when the Suit began in the later end of the year 1646. which made no leſs accompt of time than 23 years when leſs than a fourth part of that time, and a tenth of the charge would in *England* have brought it to a Period.

CHAP. XVII.

Of their Renuntiations inſerted in their Regiſtrate or Moveable Bonds.

AND that the *Bonds* with conſent of *Regiſtring*, *Decreit*, *Horning*, *Caption*, and a Renuntiation of *Premonition*, and all Legal Exceptions and Helps, which may be proponed to the contrary, and their many ſtrange Covenants and clauſes which have proceeded from the *Inventions* of *Notaries*, of Advantage-ſeeking, greedy, and diſtruſtful *Creditors* (the Laws owning no more then may or do conſiſt with the Rules of Right Reaſon) are more binding in ſhew then effect, and of promiſe then performance; and do as little affright or take away controverſies, as their Excommunications and Stool of Repentance have done their ſins; or as the dreadful uſe of Guns and Artillery have ſhortned Wars. For although by the *Scotiſh* Laws, Pactions, and Agreements, ſould be keiped and obſerved in all things

leſome, and that by the *Civil Law*, *Obligatio tanquam Oſſibus hæret*, do cleave like the Fleſh to the Bones; yet *Æquitas Naturalis* (f) *non obſtante pacto convento prævalet*, ſaith *Craig*, no agreement can hinder or take away Natural Equity; and a Releaſe or Renuntiation of all Exceptions, Legal, and Premonition, all Defences or Remedies in *Law*, or any *Covenants* to ſtand to the Judgment, Oath, or Conſcience of the *Creditor*, cannot forbid the uſe of any Pleys or Exceptions, which ought to be made unto them; or the craving of any right or equity where there was fear, force, or deceit in the granting thereof; when the thing conſented unto or agreed, is in it ſelf evil or ſhameful, or againſt *Malum* or *Turpe contra bonos mores* any known Law, Lawful liberty, Common right or equity; or that the Matter or Foundation of the Agreement was altered, or the Conditions not performed; and many other matters and things which might happen *Ex poſt facto*.

(f) *Craig*, Feud. lib. 2. Dieg. 4.

And would be as ill-looked upon by our Laws in *England*, as if any man ſhould in

in the borrowing of money, renewing of a Bond, or ſatisfying the deſires of an oppreſſing *Money-Lender*, inſert into the Bond a Renunciation of Tryal by a Jury, Proof of Witneſſes, Ordinary Retorns, or days allowed in Writs or Proces, and Bail when he ſhould be arreſted for it, or conſent that an Execution ſhould be awarded for the whole, againſt his Body, Lands, or Goods; if he ſhould fail to pay it, that he ſhould be holden or taken as a Felon, or one of his Children be a Bondman, or the like; and would as to ſome of thoſe Covenants and Conditions, be as void and unreaſonable as the Bond of the (*g*) Taylor of *Ipſwich* binding him from the exerciſe of his Trade, or as unreaſonable *Bylaws* made *Pro privato lucro* for private gain, and not *Pro bono publico* publick or common benefit; or where that which is to be done is impoſſible *Malum in ſe* (*h*) or *Prohibitum*, and againſt the Rules and Maxims of the Law; and to all ſo inconvenient, as the extremities thereof would in caſe of failer of payment, either not permit them

(*g*) *Cokes* Rep. 11. & 2 part. 5 Reports:

(*h*) *Bracton*, lib. 3. 100. *Coke* Com: ſuper *Littl:* 207. 223. & 224.

to yeeld unto it, or put them on to a greater industry to avoid it; which the *Debtors* or *Borrowers*, if they were not *Slaves* or *Servants*, as *Solomon* saith, to the *Lenders*, might as well tell their *Creditors* beforehand, or at the first; as the Ambassadors of the *Privernates* (*i*) did in their bold and ingenious answer to the *Romans*, concerning their Propositions of Peace, *Si bonam dederitis & fidam & perpetuam si malam haud diuturnam*; If good, they are like to be kept and lasting; but if bad, will not be of long continuance.

(*i*) *Livy*, lib. 5.

For although in some cases, *Quilibet renunciare potest juri pro se introducto*, yet the *Doctors* and *Masters* of *Civil Law*, do amongst all their conflicts and variety of opinions concerning Renunciations and Clauses, inserted into *Bonds* and *Covenants*, agree; or very much adhere unto the more unanimous Tenets, that (*k*) *Non valent ubi Legi resistunt*, that they are of no force where they contradict the Law, that in many cases *defensiones sunt de jure naturali cui derogari non potest*, that Defences arising from the *Law of Nature*, cannot

(*k*) *Joachimus Wibelius de Contract. mulier.* 285.

cannot be renounced, *Non valet renunciatio quæ videtur renunciare defensioni quæ est de jure naturali quod est immutabile ex pacto*, A Renunciation of a Defence grounded upon the *Law Natural*, which is immutable, and cannot be changed by any Agreement, availeth nothing. *Et non potest claudi os alicui qui pro se leges allegat*; No man is to be hindred to alleage the Law in his own defence, nor is to renounce the use or proof of Witnesses. *Hoc enim jus quod per testes probetur propter communem utilitatem inductum* (*l*) *est ergo tali juri renunciari non potest & tale pactum contra leges est*: For that the Law of Proof by Witnesses being introduced or made for common good, cannot be renounced, and such a pact or agreement is against the Law, say many Doctors, which are cited by *Vitalis de Cavbanis*.

(*l*) *Vitalis de Cambanis Tract. Claus. sul.* 284. & 299.

And there being as great a stir or strife amongst them with a *quòd sic* and *quòd non* concerning that Covenant so much used, and now or lately so much in fashion in the *Scotish* Moveable Bonds, to stand to and abide the Oath, Award, or Sen-

tence

tence of the *Creditor*, as touching Intereſt and Damage, whether valid or invalid, they that would reconcile them, or gave it any binding force at all, are inforced to agree, that if he ſhould declare or award any thing unjuſtly, the Debtor may *recurrere ad arbitrium boni viri & petere reductionem* appeal to the arbitration of ſome good man, and endeavor a reduction, and that when it is left to the will of the *Creditor*, it muſt be onely when he ſhall deal juſtly, and where a *Tertius*, a third or good man ſhall make any award in it, he is onely to ſtand unto it *Niſi in eo arguatur dolus*, if he be not found to deal deceitfully, that a *Pactum* or an Agreement to renounce *Solemnitates Legis* the Solemnities of the Law, *Vel ordinem judiciorum* Courſe or Cuſtom of a Court (which ſaith *Bartholus* (m) are not *Solùm ad utilitatem partis*, are not onely for the profit of the party) or a covenant to make good or confirm a ſentence beforehand, which would be void for want of Juriſdiction, are invalid. For (n) *Jus prætorium & jus ſolenne Civile privatorum pactis vel conventionibus immutare non poteſt*,

(m) *Barthol. in Auctentica, c. de litis conteſtat. & Vitalis de Cambanis Tract. Clauſ.* 303, 304, 310. 284 & 290.

(n) *Prælect. Cujacii de Diverſis regul. juris. L. jus publicum ſect. de Pact. l.* 45. *tit. l. ult. Cujac.*

teſt, the Law of the Prętor, and the Solemnities of the Law Civil, cannot be changed by any private Covenants or Agreements, ſaith *Cujacius* (o), *Actionum modus vel Lege, vel per Prætorem introductus privatorum pactionibus non infirmatur niſi tunc cùm inchoatur Actio inter eos convenit*, The manner of bringing Actions introduced, either by Law or the Prætor, cannot be altered by private Agreements, unleſs it be by Agreement after the Action begun: As alſo a *Pactum* or Covenant, that the *Creditor* may of his own accord impriſon or take his *Debtor*.

(o) *Pomponium, lib. 16. ad Sabinum.*

Or that he would not preſerve his Liberty or keep himſelf out of priſon *Ceſſione bonorum*, by ſubjecting all his Goods or Eſtate to the payment of his Debts, *Ut communiter tenetur per doctores*, ſaith *Vitalis de Cambanis*, do not binde, nor a Renunciation of Exceptions *in ipſo contractu* in the Contract it ſelf, *de non numerata pecunia* of the money not paid, which ſome that are unwilling to allow ſo little to that of *de non numerata pecunia*, are notwithſtanding enforced to content themſelves with the

the distinction that *Tenet quantum ad relevandum agentem ab onere probandi sed non quantum ad excludendum reum à facultate probandi oppositum*, it holdeth as to free the Plaintiff from the trouble of proving it, but not to exclude or debar the Defendant from the liberty of proving the contrary; and their Canon Law doth not deny, but *impossibilis de jure vel de facto nullam Obligationem inducit* (p), things impossible in Law, or to be done, do not at all binde. And saith *Craig* (q), *Nemo potest renunciare juri futuro neque unquam renunciatio sive relaxatio, ad jus quod nondum competit sive ad jus futurum extenditur quibuscunque verbis fiat*, No man can renounce a future right or equity, neither can it, with whatsoever words it be expressed, be extended beyond the present.

(p) *Decretal Gregorii, l. 1. cap. 8.*

(q) *Craig, l. Feudor. 3. Dieg. 1.*

And by the opinion of *Hottoman*, *Ea pacta per quæ jus libertatis imminuitur non valeant*, Agreements which diminish the common right of Liberty, do not binde; as if a man covenant to dwell always in a certain place or City, which saith *Craig* (r), *Videtur esse servitii genus & non solum cum jure*

(r) *Craig, l. 2. Feudor. 215.*

jure ſed etiam cum ratione pugnat, ſeems to be a kinde of ſlavery or ſervitude, and is not onely againſt Law, but Reaſon. (s) *Juſta autem pacta quæ rationi & æquitati conſentanea ſunt quæque ejuſmodi ſunt ut à prætore ſervari debeant id eſt neque vi neque metu neque dolo malo extorta neque contra Leges plebiſcita Senatus conſulta neque ut fraus cuiquam fiat facta*, Juſt Agreements being ſuch onely which are agreeable to Reaſon and Equity, and may be obſerved and put in execution by the Judge, and are neither drawn or conſtrained by fear, force, or deceit, nor are againſt the Laws or any *Act* of *Parliament*, ſaith *Briſſonius*, with concurrence of many other of that profeſſion: For *nemo poteſt renunciare beneficiis ac ſingularibus privilegiis quæ ſint Juris* (t) *Publici*, no man can renounce Benefits and Priviledges, when they are of Publick Right. *Et ea quæ deſcendunt ex publico jure mutari non poſſunt per pacta & juramenta*, Thoſe things which we claim by Publick Right, cannot be altered by private Oaths or Agreements: So an agreement between the Husband and the

(s) *Briſſonius de Solutione, lib. 3. 263.*

(t) *L. 1. D ad C. Vellei D. L. Juriſ. Sect. 7. & D. Sect. & Generaliter.*

Wife, *Nè de moribus agatur*, that they would not queſtion or call one anothers Behavior to accompt, before the *Cenſors* did not binde, ſaith *Paulus* (*u*), amongſt the *Romans*, *Ne publica coercitio privata pactione tollatur*, leaſt the Publick Diſcipline (which the *Scotch Presbyters* and *Elders* would hold to be ſomething rational) ſhould be by any private agreement taken away, or made uſeleſs; and our Laws and Courts of *Equity* in *England*, do not where Agreements or Renunciations ſhall appear, to be unjuſt or gained by fraud, or force deny ſuch a Defendant or debtor the benefit of *Law* or *Equity*, if they crave it; for though he did renounce it for himſelf, yet he could not do it for them; or as to the duties of their places, where alſo Fines which are Releaſes as well as Grants upon Record; and our Statutes Staple which are Bonds and Obligations upon Record, do not take their force, the one to be as a *Judgment*, and the other to Bar after a *Non-Claim*; meerely from the parties conſent, but from the *Acts* of *Parliament* which ordained them.

(*u*) *L. 5. F. de Pact. Dotal Salmuthius in Parcirol Comment. Tit. 2. 249.*

But

But the *Nature*, *Customs*, and *Constitutions* of that people and *Country*, requiring or inclining them more unto such a rigorous kinde of proceeding in their Bonds and Contracts with one another; their way of *Registring* of Bonds, and Extremities, and Hornings thereupon, may seem to be onely calculated for their own *Meridian*, where some kinde of Necessity or Reason might be found for some, if not all of these kinde of courses.

CHAP. XVIII.

The Registring of Bonds, and the fierce and rigorous proceedings thereupon, are more proper and accommodate to the Customs and Manners of the people of Scotland, *and of more necessity then with us in* England.

FOr besides their great Jealousies and little Trust one in another, little

Trade and Money, the Gripes and Oppreſſion of thoſe that have it, and the Neceſſities of thoſe that have it not, and muſt think the hardeſt conditions with a little favor or reſpite of time, to be better then the pangs or *Convulſion*-fits of their preſent wants or occaſions, a leſſer ſecurity would as the Manners, Conſtitutions, and Cuſtoms of that people were at the time of the firſt invention of that way of Regiſtring Bonds (there being no *Statute* or *Act* of *Parliament* for the firſt inſtitution or way of it) or as they have been lately but put the Creditors either to a hazard of looſing their money, or under-going a ſtrange *chace* in the purſuite and recovery of it, in regard of the vaſt power of their *Clergy*, with their *Church-Cenſures* and *Excommunications*, and the *Inundation* of them, into and upon almoſt all mens eſtates and buſineſs (claiming before the *Reformation*, the cogniſance of all matters which depended (x) upon ſimple *Faith* and *Promiſe*, and ſince in all cauſes of *deceit* in buying and ſelling, and all things that might tend to *ſcandal*,) and their frequent

(x) *Hector Boet*, lib. 10. *Spotswoods* Hiſtory of the Church of *Scotland*, l. 2. 26. & l. 3. 165.

and

and insolent clashing with the *Civil Magistrates*.

The *Sheriffdalties* of many Courts, Shires, and places, as *Murray*, *Argyle*, *Tividale*, *&c.* And the *Stuarties*, *Constabularies*, *Chalmerlaries*, and *Regalities*, of many inferior Courts, granted or vested in divers of the Nobility and great Lords by Inheritance.

The great and extraordinary power which the Nobility and Barons of that Nation, Lairds, and other Men of Lands and any Estate considerable, had upon their Tenants and Vassals who held of them their Lands by Service or Vassalage, with the dependencies of their Tenants upon them, and the mutual Relations, Offices, and Obligations, which their Lands do by their *Feudal Laws* mutually oblige them unto, for *Mutua dominii homagii & fidelitatis connexione*, say *Skene* and *Craig* (*y*), By the mutual league and band of fidelity which is betwixt the over Lord and his Vassal.

(*y*) *Skene De Verborum Significatione.*

The Tenants are bound by Oath *Caput famam & fortunas dominorum suorum defendere*

dere (z) to defend and preserve the life, reputation, & estate of their Lords, *Auxilium & consilium præstare*, Give them aid and counsel, and not knowingly or willingly to be at any Meeting or Assembly, where danger of life or member may happen to them, or where they may receive any wrong in their persons, fame, or estate, but shal do their endeavor to hinder it or reveal it to them, *Pro viribus & omni ingenio*, Use all their strength & art to recover any thing lost, their secrets shall not reveal, *Et dominis justis ex causis bellum inferentibus---Aut ex quacunq; causa se defendere volentibus suppetias ferent etiam si vitæ suæ periculum adeat*, Aid and assist them with the danger and hazard of their lives in their just wars, or for any cause whatsoever defending themselves (wch saith *Craig*, hath such an extent, as the Vassal or Tenant is bound *Contra fratrem suum filium aut patrem* to defend his Lord against his own Children, Father, or Brother, *Arctiúsque est hoc amicitiæ & fœderis vinculum quàm ullum naturale* (a), and is a greater and stronger tye then that of nature) to attend them *etiam non requisiti* without requeſt,

(z) *Craig*, lib. 2. Feud. Dieg. 11. 208.

(a) *Craig*, ibid. 210.

requeſt, *Non ſolum intra diſtrictum ſed etiam extra quoties dominorum periculum in vita honore aut fortunis urgeat*, Not onely in the Liberty or Bounds of their Lords Juriſdiction, but without, when their Lives, Fortune, or Honor, ſhall be concerned, are not to ſue or bring an action againſt them, without leave or licence, nor bear witneſs againſt them; for which the Lords are alſo *de fidelitate non juramento* for Honor and Faith ſake *Vaſſallos tueri & eorum res bona famam nullo alterius reſpectu habito promovere tenentur*, bound (without any reſpect had to other) to defend their Vaſſals or Tenants, their Goods, Reputation, and Eſtate.

Who cannot alien without the Lords conſent, nor the Lords without the Tenants, if the Tenants eſtate or condition ſhould be worſted by it; (which may ſufficiently difficult and obſtruct the arreſting or diſtraining of any powerful Lord or their Tenants, or the lending of money to them upon eaſie terms or ſecurity.)

The great and continual *fewds* and *entridings*

ridings of the Nobility and great men one upon another, and their ſeveral Tenants, burning of Villages, Houſes, Goods, and Corn, impriſoning waſting, ſtarving, and murdering one another, as in the Caſe of *Alexander Ramſey* (*b*) taken by *Liddiſdale*, Combination and Confederacies of their *Clans*, *Kinreds*, *Cheifs*, and *Heads of Families*, vexing their Neighbors and partakings one with another, upon any Contentions, Wraths, and Animoſities; driving away preys and booties, hindering and depreſſing of Juſtice, furious and unbecoming way of Appeals, or falſing of *Dooms* or *Sentences*, *viva voce* in open Court, as it is falſe *Stinkand* and *Rotten*, until by an Act of Parliament of *James* the Fourth (*c*) it was ordered to be in more modeſt expreſſions; with their inſolencies and dominearings towards all that ſtand in their way; ſturdy and revengeful Factions, and coming to the Courts with many of their Tenants and Followers armed; ſome of them, as the Earls of *Dowglas* (*d*) and *Angus*, riding with two thouſand or one thouſand Horſe and

(*b*) Black Book of *Scone*.

(*c*) 6 Parl. *James* the Fourth, *cap.* 99.

(*d*) Hiſtory of the Houſe of *Dowglas*, 148. 274.

and Tenants at a time; unaptneſs and untractableneſs to Laws, and to be ruled or governed; which the heavy troubles and variety of commotions in the reigns of their King *James* the Fifth, Queen *Mary* and her ſon, King *James* the Sixth, their Lawburrows, and giving ſureties for the peace one to another, and their Records and Hiſtories do aboundantly teſtifie.

Bonds of *Aſſurance* and *Aſſociations* to maintain one another in their quarels, which have been ſo impudent as to be publickly Regiſtred in the greateſt of their Courts of Juſtice, as a (*e*) Bond or Contract of *Michael na-Smith*, and *John* his ſon, being none of the moſt eminent, (who had ſlain *William Scot*, and *John Scot*, ſons of *John Scot*) for Reconciliation and maintaining of amity and love betwixt the ſirnames of *Naith-Smiths*, and *Scottes*, in time coming, wherein under the pain of One thouſand pounds, they do binde themſelves, their *Bairns*, *Kin*, *Friends*, *Men*, *Tenants*, *Allies*, *Dependers*, and *Partakers*, and all wiles that they may ſtop or let for themſelves, their hail Kin,

(*e*) 12 *June.* 1589.

Friends, Allies, Dependers, or Partakers, to save harmless and *skaithles*, the said *John Scot*, *Simond Scot* of *Helmburn*, and *William Scot*, *Walter Scot* his brother, *Philip Scot* his eldest son, with the remains (to be sure to omit none) of his sons and *bairns* and the Airs, Kin, Friendis, Tenantis, Servandis, Dependers, Assisters and Partakers, of them and their foresaidis in their Bodies, Landis, Heritages, Rooms, Steddings, and Geir, accompanied in or about the same year with that of *Walter Weir*, who having in *Spain*, unawares, and upon sodaincte slain *John Weir*, lawful son to *James Weir* of *Blackwood*, did for assoilment of that blood and *sloghter*, binde him, his heirs, successors, and heritage, in three thousand marks, in man-rent and service to the said *James Weir*, his aires and successors, in his Lands and Livings of *Blackwood* perpetually, in all time coming sua lang as the said house of *Blackwood* remains, and is brouked by the said surname of *Weir*; and that he and his foresaidis sall take part with the said *James* and his foresaidis, in all and sundry his actions, quarrels,

rels, and buſineſs, and to reveal any thing which he knows to their damage.

That part of their *Laws* which forbids the Father to deviſe his Lands, or any part thereof, by his laſt Will and Teſtament, without the conſent of his Heir (*f*), and prohibites any man to complain but in his own Lords Court, under the pain of paying the unlaw of it.

(*f*) *Quon. Attach. cap.* 17.

The *Savageneſs* and *Barbarities* as King *James* the Sixth (*g*) had reaſon to term them of the *Iſles* and *Hielands*, and the looſe kinde of living, and *Boothaleinge*, of the *Borderers* and *Lowlanders*, the borderers of the one ſide, and the *Hielands* on the other, comprehending a great part (if not moſt of that Country) factions, partakers, and armed-followers of their great Lords, Peaſantry of Tenants, poverty of their *B*urroughs and Tradeſmen, and the courſe holden of that Country, to give no faith to Witneſſes or any proof, without a Bond or Writ, but remitting it to the Debtors *Ayth of verite*, where the ſum ſhall exceed One hundred pound Scotch money, or Five pound of our Engliſh, cannot but

(*g*) Declaration of King *James*. *Anno* 1605.

hinder the arresting or destroying of any Lord or their Tenants, dependers, followers, or allies, and deter men from lending of money upon easie terms or security, if they may not have their Debtors as it were in a string at their Girdles; and if they should start or break loose, have the Cognisance or prosecution of their Suits or Actions thereupon, so fixed and fastened to the *Dernier Resort*, or *Superior Court* of *Session*, or *Colledge* of *Justice*, as they need not fear the vexations of *Appeals* or *Reductions*, but may take them by the *Nose*, as they say in *Scotland*, where they can catch them.

Especially when their other Remedies at Law, where they have not a Registred Bond, are so far off, and hard to come by, and the way so craggy and tedious.

Wherein if the defender be willing (as he hath reason) to avoid Letters of *Horning* and *Caption*, he doth compeir upon the first summons, call for Execution or Retorn of it (which he may quarrel and except against) as not duly served, or before twa witnesses besides the Officer) and

and demand inſpection of the *Libel* (*b*), and ſight of the peices of the Proces indorſed, which are to be delivered unto him for eight and forty hours; which time is called *Inducie deliberatorie*, like our (but too ſhort) Imperlances, and none to be admitted as Procurators either for the purſuer or defender, but ſuch as have their *authentick* (*i*) Letters or Commiſſions, or inſtead thereof extracts out of the *Regiſters Books* that they were conſtituted Procuratores.

(*b*) *Quon. Attach. cap.* 84.

(*i*) *Craig, lib.* 2. *Feud. Dieg.* 4.

Whereupon the purſuer exhibiting his *Libel*, the ſame is accompanied, if there be any (as it often enough happens) long *run* or defence with Oaths *de Calumnia* on the Plaintiffs part, which are not ſeldom the Proctors taking them in *Animam conſtituentis*, continuation of days till the Court be at leiſure, which their over-ſhort prefixions do cauſe a neceſſity of lengthening exceptions *declinator* to the Court, or to the perſon of ſome of the *Judges* exceptions againſt the *Libel* or *Summons*, as that it is blobbed or blotted in the *name*, *cauſe*, or *date*, or *Exceptions Dilator*, as

payment

payment demanded before the day, or time agreed upon, and the like; which may at twa times be proponed, and requirand as many Anſwers and Interloquators, *Exceptions peremptor*, as that the *Bond* or *Contract* was made by *fraud*, *fear*, or *dread*, the moneys paid, or that there was ſome other *Agreement* or *Compenſation* (*k*) made, and as many other *Exceptions peremptor* (which are not a few) as the *Civil Law* by which they are principally guided can furniſh, which the *Proponer* (*l*) has liberty to propone at ſeveral times; and upon ilke Exception may deſire ſeveral *Anſwers* and *Interlocutors* (of which, if any ſhall be proved or made good by the *Defender*, a *Decreit* ſall be given in his favors, though he fail in the reſt) with time given to the *Defender*, upon alleaging any title by *Wreit*, to produce it at the *Term*, which ſhall be aſſigned to him for *probation*, with *election* of proofs and probation by *Wreits* to be produced, and the like to the purſuer, *Contra producenda in termino probatorio*, *Replies* and *Duplies*, and ſometimes *Triplies*, *Quadruplies*, *Quintuplies*, *Sextuplies*,

(*k*) *Quon. Attach. cap.* 29.

(*l*) *Skene's* Form of Proces before the Lords, *cap.* 14.

Sextuplies, and *Septuplies*, and as many more as can be had or invented one againſt the other, upon every *Exception* put in by the *Plaintiff* or *Defendant*,(*m*) & *Witneſſes* examined upon each of them, with ſeveral *Interlocutors* demanded or given upon every *Exception*, *Allegeance*, *Anſwer*, *Reply*, *Duply*, *Triply*, *Quadruply*, *Quintuply*, *Sextuply*, and *Septuplies*, and a huge expence of *Paper* or *Scrowls*, as they call them in, *Documents* of the *Interlocutors* taken by *Notaries*, or to inform the *Judges* (whereas in *England* the Lawyers in their Pleadings, by Writing, or word of Mouth, and the *Judges* do to the great eaſe of the people, in their attendance, time and charges, make it their onely care and buſineſs to finde out and come to the point or *Cardo queſtionis*) *Proteſts* and *Inſtruments Notarial* upon *Orders* or *Interlocutors*. If they do not pleaſe either of the parties, and if *Wreits* or *Writings* be in the keeping of any other *Summons* or *Incident diligence*, granted againſt the *Heavers* and *Poſſeſſors* thereof, and upon their denial a *Proces* (the principal cauſe ſleeping in the interim)

(*m*) Form of Proces before the Lords of Seſſion, *cap.* 14.

rim) led and deduced againſt them, witneſſes not compeiring, ſummoned to compeir the ſecond day, under pain of *Rebellion*; if not then, the third time under Certification to be denounced *Rebels*; and if not then, Letters of *Caption* granted againſt them, three ſundry *Terms* allowed for *Probation* of the *Libel*, which are followed with *Exceptions* againſt the Witneſſes, as that they are (*n*) *Women*, *Pareſmen*, *Bondmen*, Men ſworn and ſcourged about the *Kirk*, *convict* or *redeemed* fra Juſtice, Men of blood or affinity within the fourth degree; the *Maiſters*, *Bailiff*, *Counſel*, *Retinue*, or *Farmer*, or wearand his *Cleathe*, *Perſons excommunicate*, and *Outlawed* (as many may be when they are ſo quickly *borned*) and the *Depoſitions* taken and ſealed with the *Judges* Seal; not to be publiſhed until they privately adviſe the *Proces*, and diſcern which of the parties hath ſufficiently proved his matter; the party againſt whom the *Probation* is uſed, ſometimes deſiring and proteſting, That it ſall be leſome for him to propone and uſe all lawful objections,

(*n*) Stat. 2 *Robert* 1. *cap.* 34.

Contra

Contra producta againſt the *Wreits*, *Qubilks*, are produced againſt him *In modum probationis*; after which, gyf there be any *Wreits* allowed or produced *In modum probationis*, the party againſt whom they are produced, is to have inſpection thereof for a certain time, with twa charges for Production and Certification; that in caſe of *Non-production* they ſhall be diſcerned to make no Faith, and are when they come, to withſtand all objections, that they be falſe or fenzeit, or the like; which the *Lords* or *Judges* do either repel and order to be tryed by another *Action*, and pronounce their *Decreit* in the *cauſe* in the mean time, and ordains the ſamine to have *Execution*, or ſtays the pronounciation in the principal *cauſe*, until the *diſcuſſion* of the *Pleyes* and *Exceptions*; or if the truth of the caſe cannot be found or made out by the *direct*, do proceed to an indirect way of *Improbation*, be *Conjectures*, *Preſumptions*, *Probabilities*, compariſon of *Wreits*, *Seals* and *Subſcriptions*, *Interlineations*, *Razures* (o), or when the party proves himſelf, or the

(o) *Skenes* Form of proceeding before the Lords of Seſſion, *cap.* 29 & 30.

Writer or Witneſs, to have been in any other place at the time of the making ther-of, or by the date or ſubſcription of the Witneſs, or be divers other ways or circumſtances, as occaſion offers, and the *Judges* ſhall think *relevant*; to the *quhilk* indirect manner of *Improbation*, the *Lords* of the *Seſſion*, or *Colledge* of *Juſtice*, are onely *Judges* competent for that, as their Laws ſay, the *Inferior Judges*, ſhould Judge *Secundum allegata & probata*, and may not follow Preſumptions and Improbabilities as the Lords of the *Seſſion*, who being ſupreme Judges, and the Lord Chancelor uſing ſometimes to ſit with them, do it *Ex officio Nobili*, as they term it; and being many in number, do ſit in an inner Room or Chamber, where reſerving the major part of themſelves for the harder matters, they do ordain one of their number weekly, during the *Seſſions*, and by turns to ſit in an outer Room or Chamber; where if no difficult matters or cauſes occur, he doth ſingly, and without them, order or decree them: But if any hard matter ariſeth, doth either of his own accord, or upon

upon the *Petition* of any the unſatisfied parties, after he hath given ſentence, go in and adviſe with them, or tranſmit the whole matter or cauſe unto them.

The perplexed and tedious traverſes to be trodden and endured in thoſe kinde of *Suits* or *Labirinths*, are too often and not a little heightned and made to be a great deal more.

If the Suit were not originally begun or commenced before the Lords of the Seſſion, but in ſome of the little Inferior Courts, where they trouble one another with three *Eſſonzis* (*p*) Cogniſance demanded by the Over-Lords Tranſlation of it, from the Inferior Court, and (*q*) repledging the Defendant to his Lords Court, to one a little more Superior, giving in *Burgh* or *Caution*, falſifying of *Doomes* (*r*) or *Sentences* within forty days; for that the Inferior Judge is ſib of blud, or of kin, Outlawed or Excommunicate a Tenant, or of Counſel, or partakes in the quarrel; getting Licenſe of the Scheriff, in whoſe liberty the Debtor dwelleth, or of the Lord of the Land, to

(*p*) *Reg. Maieſtate, cap.* 24.

(*q*) *Skenes* Form or manner of proceeding in Baron-Courts, *cap.* 25.

(*r*) *Quon. Attach. c.* 13. Statute *David* 2. *cap* 7.

poynd, Reduction of their Decreits and Appeals, fra ane Court to another, hearing of the cauſe again by the Lords of Seſſion, wherein the Defender, though he did compeir and make defence *in prima inſtantia*, in the Inferior Court, may make uſe of ſic Reaſons and Exceptions quhilks were not proponed before by him. And the Plaintiff, if he do obtain any *Decreit* or *Sentence Definitive*, will if the contention be not by that time *cooled*, be welcomed with no ſhort courſe of trouble, delays, and difficulties, in the procuring it to be executed by *Poynding*, *Compriſing*, *Letters* of *Horning* and *Caption*, as is before expreſſed, with the no ſmall expences alſo to be added to the reſt by *Inhibitions*, many times ſued out in the beginning, middle, or latter end of the Suit, or after the *Definitive Sentence* given, as the jealouſies of the Plaintiff, or his deſire to vex the Defender, ſhall ſuppoſe it to be needful, charging him not to ſell or alien in the *interim*, or until the Plaintiff ſhall have done with him; which many times happens to be to as much purpoſe, as that of *John Bothwel*,

Bothwel, the Biſhop of *Orkneys* Son, Regiſtred the ſecond day of *March*, 1589. Wherein he being to travel beyond the Seas, and fearing ill company, and that he might thereby hurt his Lands and Eſtate, and contract Debts, did interdict himſelf of all *ſelling*, *diſpoſing*, *aſſignment*; *taks lang or ſhort Obligations*, *Contract*, *or Debts*, *which may prejudice him or his Lands*, *until he be thirty years of age*, *without the conſent of his Father*, *and Sir* Lewis Ballendine, *and others therein named*. And gyf he ſall do the contrair wills, that the ſame ſall be of *no availl according to the Law*; requiring moſt humbly the Lords of *Seſſion*, to grant Letters of Publication, that none pretend ignorance thereof: And for the more ſecurity, was content it be Regiſtred in the Bukes of *Counſail*, and to have the force and effect of a *Decreit*, and *Letters Executorials* to be direct thereupon.

So many are the Windings and Mæanders, Turmoilings, Vexations, and loſs of time and money in their Actions and Suits, upon Bonds and Contracts, which are

are not regiſtred & enough, and too many, when they are made with clauſes or power of Regiſtration; which would not perhaps be ſo much *careſſed* or highly commended by our *Law-changers*, if they knew how and by whom it was introduced.

CHAP. XIX.

Of the Original of the Bonds, with Clauſes of Regiſtration, and how near of Kin *the greedy and oppreſſive Clauſes in them, are to the Form of Bonds, in which the* Caurſini, *a company of* Cannibal Uſurers *in the reign of our King* Henry *the Third, did inthral and wrap their Debtors:*

WHich the Learned *Craig*, who was employed hither as a Commiſſioner, about the year of our Lord, 1607. concerning the then endeavored Union betwixt

twixt *England* and *Scotland*, will tell them, That it was by the power and artifice of the ruling *Clergy* of that Nation, to bring the hearing of as many cauſes as they could into the *Seſſion*, where many of them (until by an *Act* of *Parliament* made by the late King *Charls* in *Anno* 1641. were prohibited) did ſit as *Judges:* As will be evident to any who ſhall conſult with him in his firſt Book of *Feudal Laws*, where ſpeaking, (*s*) *De origine & progreſſu Juris Canonici & ejus uſu apud Scotos*, of the Original and Uſe of the *Canon Law* in *Scotland*, and how the *Clergy* did get the Cogniſance of *Wills* and *Teſtaments*, in regard that *Pupillares pecuniæ in Eccleſiis reconderentur, & Epiſcoporum fidei concrederentur*, Orphants money were uſually for ſafegard, truſted in the Churches, and of Matrimonial Contracts, in regard they had declared marriage to be a *Sacrament*; and that in *England* they did heretofore *Sub ſpecie juris jurandi & prætextu læſæ fidei omnium litium & judiciorum cognitionem vendicare*, under pretence of an Oath given in ſome Contracts, claim

(*s*) *Craig. lib.* 1. *Dieg.* 3. 16.

claim the Cogniſance of all Cauſes and Suits, and *Reciprocis contractibus & omnibus obligationibus clauſulam juris jurandi apponi curaverunt*, did in their Bonds and Contracts, inſert a clauſe of an Oath to be taken for performance thereof, he ingeniouſly confeſſeth; (t) *Ut nos hodie clauſulam Regiſtrationis in libris conſilii ſolemus apponere ut cauſæ diſputationem ad Senatum trahamus*, as at this day we do a clauſe of *Regiſtring* in the *Books* of the Counſel or *Seſſion*, to bring the hearing of Suits which ſhould ariſe thereupon into that Court.

(t) *Craig, l. 1. de Fend. Dieg. 3. 16.*

Which kinde of ſevere and hard-hearted Bonds, being the fruitful Parents of their *Bills* of *Suſpenſion*, are ſib or very near of kin to the *Bonds* or *Obligations*, with which the *Senones*, a race of people of the *Province* of *Brie* in *France*; and the *Caurſini*, a ſort of cunning *Harpies* or *Uſurers* who came out of *Italy* into *France*; whence being driven by the *Preaching* and care of ſome good men, and coming with the *Senones* into *England*, amongſt the many ſtrangers which troubled a great part of the Reign and Government of our King

King *Henry* the Third did fetter and impoveriſh their Debtors, and ſuch as borrowed money of them to ſupply their neceſſities, as by the Form enſuing, which *Matthew Paris* hath given us, will appear.

(u) *Univerſis præſens ſcriptum viſuris, N. Prior, & Conventus N. ſalutem in Domino: Neveritis nos mutuò recepiſſe apud Londinum, pro noſtris & Eccleſiæ noſtræ negotiis utiliter expediendis, ab N. & N. pro ſe & ſociis ſuis, civibus & mercatoribus Civitatis N. centum & quatuor marcas bonorum & legalium eſterlingorum, tredecim ſolidis & quatuor ſterlingis pro marca qualibet computatis. De quibus centum & quatuor Marcis, nomine noſtro & Eccleſiæ noſtræ, benè nos vocamus quietos & integrè proteſtamus pacatos: Exceptioni non numeratæ, non ſolutæ, & non traditæ nobis pecuniæ, ac etiam exceptioni, quòd dicta pecunia in uſus noſtros & Eccleſiæ noſtræ non ſit converſa, omninò renunciantes. Quas prætaxatas centum & quatuor Marcas Sterlingorum, prædicto modo & numero computandas dictis mercatoribus, vel uni ipſorum, vel eorum*

(u) Matth. Paris, 418. *Anno* 1235.

certo nuncio, qui præsentes literas secum attulerit, in festo Sancti Petri ad vincula, scilicet, prima die mensis Augusti apud Novum Templum Londini, Anno Dominicæ incarnationis Millesimo ducentesimo trigesimo quinto, per legitimam stipulationem promittimus, & tenemur nomine nostro & Ecclesiæ nostræ nos integrè soluturos, & reddituros. Tali tenore adjuncto, quod si dicta pecunia prædictis loco & termino, sicut dictum est, non fuerit persoluta & reddita, ex tunc in anteà semper transacto termino promittimus, & tenemur per eandem stipulationem, dare & reddere prædictis mercatoribus, aut uni eorum, vel eorum certo nuncio, per singulos menses duas, pro singulis decem Marcis, unam Marcă dictæ monetæ, pro recompensatione damnorum, quæ damna & expensas ipsi mercatores ex hac possunt incurrere vel habere: Ita quòd damna & expensæ & sors cum effectu peti possint, ut superius sunt expressa, & expensas unius mercatoris cum uno equo & cum uno serviente, ubicunquè fuerit mercator, usque ad plenam solutionem omnium prædictorum. Expensas etiam factas & faciendas, pro ipsa pecunia recuperanda, reddemus & restaurabimus

rabimus eiſdem mercatoribus, vel uni eorum, vel eorum certo nuncio. Quàm recompenſationem damnorum intereſſæ, & expenſarum, promittimus dictis mercatoribus in ſortem dicti debiti nullatenus computari; ac non detinere dictum debitum ſub prætextu recompenſationis memoratæ, contra voluntatem prædictorum mercatorum, ultra terminum antedictum. Pro quibus omnibus antedictis, firmiter & plenariè adimplendis & inviolabiliter obſervandis, obligamus nos & Eccleſiam noſtram, & ſucceſſores noſtros, & omnia bona noſtra & Eccleſiæ noſtræ, mobilia & immobilia, Eccleſiaſtica & mundana, habita & habenda, ubicunque fuerint inventa, Mercatoribus antedictis & eorum hæredibus, uſque ad plenam ſolutionem omnium prædictorum, quæ bona ab eis precario nomine recognoſcimus poſſidere. Et volumus ſuper omnibus antedictis ubique & in omni foro conveniri, renunciando pro omnibus antedictis, pro nobis & ſucceſſoribus noſtris, omni Juris auxilio Canonici & Civilis, privilegio Clericatus & fori, Epiſtolæ divi Adriani, omni conſuetudine & Statuto, omnibus literis, indulgentiis privilegiis, pro Rege

Angliæ & omnibus regni ſui à ſede Apoſtolica impetratis & impetrandis, conſtitutioni de duabus dietis beneficio reſtitutionis in integrum, beneficio appellationis & recuſationis, literis inhibitionis Regis Angliæ & omni alii exceptioni reali & perſonali, quæ poſſet objici contra hoc inſtrumentum vel factum. Omnia iſta promittimus fideliter obſervanda. In cujus rei teſtimonium, præſenti ſcripto ſigilla noſtra duximus apponenda. Acta die quinta Ælphegi, Anno Gratiæ MCCXXXV.

(x) Form of Bonds uſed heretofore in *England* by the *Caurſini*.

(x) TO all to whom this preſent writing ſhall come, *N.* Prior and Covent of *N.* ſend greeting in the Lord: Know ye that we have borrowed and received at *London*, for the uſe of us and our Church of *N.* and *N.* in the behalf of themſelves and their fellows, Citizens and Merchants of the City of *N.* One hundred and four Marks of good and lawful ſterling money, thirteen ſhillings and four pence ſterling, to be accompted for every Mark; of which, One hundred and four Marks in our, and our Churches name, we hold

hold our ſelves well contented and wholly ſatisfied, renouncing the *Exception* of the money, not numerate, paid, or delivered to us; or that it was not employed to our and our Churches uſe; which aforeſaid One hundred and four Marks ſterling, to be accompted in manner as aforeſaid, We do for us and our Church, binde our ſelves in the name and behalf of us, and our Church, and covenant and promiſe, wholly to pay and reſtore to the ſaid Merchants, or one of them, or their certain Attorney, bringing this our Bond with him at the Feaſt of St. *Peter*, *ad vincula*, that is to ſay, upon the firſt day of the moneth of *Auguſt*, at the *New Temple* at *London*, in the year of the Incarnation of our Lord, 1235. With theſe further conditions and covenants added, That if the aforeſaid money ſhall not be paid and rendred at the place and term aforeſaid, then for the time to come, and for ſuch default we ſhall give and render to the aforeſaid Merchants, or one of them, or their certain Attorney, for every two moneths, one mark for every ten marks, in recompence

of

of the losses, damage, and expences, which the said Merchants shall incur or have by reason thereof; so as they may effectually require, & demand their principal damage and interest, as is above expressed. And the expences of one Merchant with one Horse, and with one Servant, whersoever the Merchant shall be, until full payment of all the aforesaid; also that we shall pay to the said Merchants, or to one of them, or to their certain Attorney, their expences laid out, or to be disbursed for the recovery of the said money; which recompence of damages, interest, and expences, we promise to the said Merchants, shall in no wise be accompted as the principal, nor shall not forbear payment of the debt, under pretence of the aforesaid recompensation, against the will of the aforesaid Merchants beyond the term aforesaid: For all which aforesaid, firmly and perfectly to be fulfilled, and inviolably observed, we binde us, our Church and Successors, and all our Goods, and the Goods of our Church, moveable and immoveable, Ecclesiastical and Temporal, had and to be had,

where-

whereſoever they ſhall be found to the aforeſaid Merchants, and the heirs of them, until full payment of all the aforeſaid: Which Goods in our name, we acknowledge to poſſeſs from them onely as in courteſie, and for or by reaſon of all the aforeſaids, to be cited any where, or in any Court or Juriſdiction, renouncing for all the aforeſaids, for us and our Succeſſors, all remedy of the Canon and Civil Law, priviledge of Clerks, or Orders, Juriſdiction or Court, the Epiſtles of *Adrian*, every Cuſtom and Statute, all Letters, Indulgences and Priviledges, gotten and to be gotten for the King of *England*; and all of his Kingdom, from the Sea Apoſtolick, the Conſtitution or Decree of two days journey (or not to be drawn further to appear in Judgment) the benefit of full Reſtitution, Appeal and Defence, Letters of Inhibition of the King of *England*, and all other Exceptions, Real and Perſonal, which may be objected againſt this Inſtrument or Deed: All which things we promiſe faithfully to obſerve. In witneſs whereof, we have cauſed our Seals to

be

be put unto this preſent Writing, the Fifth day of *Ælphege*, in the year of Grace MCCXXXV.

Whom *Roger*, Biſhop of *London*, excommunicating for thoſe their ſhameleſs gripings and uſuries. (y) *Ipſi tumentes & ſuperbi de Papali defenſione confidentes in Romana Curia impetrarunt ut dictus Epiſcopus qui jam ſenuerat valetudinarius & Ægrotativus citaretur peremptoriè in remotis partibus ultra marinis coram judicibus Cauſſinis familiaribus quos elegerunt ipſi ad voluntatem ſuam ut compareret ſuper tali injuria mercatoribus Papalibus irrogata reſponſurus, Epiſcopus verò malens patris verenda ut Sem tegere quam ut Cam revelare ſuſcitatum tumultum Sedavit pacificè*, They being proud and haughty, and truſting in the Popes aſſiſtance, did (ſaith the Monk of Saint *Albans*) procure the Pope to cite the old and ſickly Biſhop peremptorily to appear at *Rome* before Judges, who were made or packed by themſelves to anſwer for the wrong done to the Popes Merchants; inſomuch as the Biſhop being willing,

(y) Matth. Paris, 419.

nakedneſs of his Spiritual Father the *Pope*, then with *Ham* to reveal or diſcover it, was content to take up the buſineſs: And the King afterwards upon the complaint of the people, cauſed many of them to be (z) indicted, fined, and impriſoned for their Uſuries and Oppreſſions; which in reſpect of their Bribes, and Money given, did not preſently extirpate them, until time did in that Kings reign (for we hear no more of them afterwards) carry away both them and their Uſury-Form of Bonds, and Obligations; which *Matthew Paris*, who lived and wrote in that Kings reign, heavily complains of, and calls them (a) *Peſtis abominanda qui Uſuris omnia corruperint, omnes depauperarunt obmurmurantibus Judeis, quos nequitia vicerunt*; a Peſte or Plague abominable, corrupting and beggering the people; and, as he ſaith, were more wicked then the Jews, who were troubled to ſee themſelves out-done by them.

(z) *Matth. Paris*, 822.

(a) *Matth. Paris*, 525 & 875.

The conſideration of which kinde of extremities, or rather greater, put upon Debtors & Defendants, by oppreſſing and

usuring Creditors in *Scotland*, cruelly manacling their Debtors with the chains of their own necessities, and those pitiless Covenants and Clauses which they inforced them to insert in their Bonds and Securities.

CHAP. XX.

Of the dislike and ill opinion which King James the Sixth, and the Parliament of Scotland, had of the unlawful and impossible Conditions which were then usually inserted in the Bonds, Contracts, and Obligations of that Nation.

WHich made no doubt some store of Inconveniences and Complaints, may well be thought to have been the ground or care of an Act of Parliament made by K. *James* the Sixth, in *An.* 1592. before he came into *England*, or had conversed with our better Laws and Customs; and may tell us what opinion that

King.

King and Parliament had of thoſe mercileſs and unreaſonable Conditions, Covenants, Preſixions, and Tying of Men to the *Horn*, with which their Regiſtrate Bonds were furniſhed at the time of the making of the ſaid Act of Parliament, wherein it being declared,

(b) *That as it is not leſum to uſe and commit Uſury; ſa it is not leſum to any privy man, be his awen invention and authourity, to aſſiſtet or burden anie of the Kings Leiges, with unlauchful and impoſſible Conditions againſt all Law, Equity, Reaſon, and gud Form, albeit their neceſſity for the time, conſtrain them to aſſent thereto; as quhair ſum perſons giwes fourth their Money upon Profit, upon Contracts or Obligations, they provide, that the parties receivers thereof, quhair ſoever they dwell, in ſartheſt parts of the Realm, ſalbe charged to make payment, onely be open Proclamation, at the Mercat Croſs of* Edinburgh, *upon ſa ſchort and ſuddain warning, as probably and poſſibly it cannot cum to the knawledge of the perſons ſwa charged. And that the denunciation of the Horning ſalbe at the ſamyn*

(b) 12 *Parl. James* the Sixth, *c.* 139.

Mercat Croſs, and the Horning Regiſtrate in the Shireff Bukes of Edinburgh, *maks and the ſamyn als lauchfull, as gyf the perſones were charged perſonally, or at his dwelling place: And the Execution of Horning, uſed at the Mercat Croſs of the Head Burgh of the Schire, quhair the parties dwellis: And the Hornings Regiſtrate in the Shireff Bukes thereof, to the great hurt and prejudice, not onely of the parties ſa denunced; but of our Sovereign Lord, and his Leiges, to quhais knowledge probablie the ſaides denunciationes of Hornings cannot cum.*

The King with advice of his Eſtaites in Parliament Statutes, Ordainis and Declairis, That na ſick unlauchful and unpoſſible Conditiones, be made in Contracts or Obligationes, amanges anie of his Hienes Subjects in time cuming. And in caſe anie denunciationes of Hornings, ſall happen to be made at the ſaid Mercat Croſs of Edinburgh, *onely upon charges uſed thereat, proceeding upon the unlauchful and impoſſible Conditiones above ſpecifeid; the ſame charges and denunciationes of Horning, ſall*

not

not be repute lauchfull. Bot the parties Vſers theirof ſalbe charged, to cauſe, charge, and denunce of new, according to the form, uſed and obſerved be the Common Law, and conſuetude of the Realm.

But how ever the Mony-Lenders of *Scotland*, and thoſe that take Securities, are ſo much in love with thoſe *Thorny* and *Tenter-hooking* Clauſes in their Regiſtrate Bonds; and that, that *Act* of *Parliament* hath not had power enough to perſwade the forſaking of them, their Regiſtring of Bonds, were never yet able to ſecure the Lenders of Money, and Purchaſers of Lands in *Scotland*, ſo well as the Laws of *England*, already ordained, do the Lenders of Money and Purchaſers in *England*.

CHAP.

CHAP. XXI.

The Laws of Scotland *do not so sufficiently secure the Purchasers of Lands, and Lenders of Money in* Scotland, *as the Laws of* England *do those that lend Money or purchase here in* England.

FOr their *Bonds* being not presently Registred, but kept as a Dormant security, until the time of payment be elapsed, the Principal Money for some or many Moneths or Years afterwards, being continued and the *Bonds* not Registred, do by the death of the Obligors or the parties therein bound, before the Registring, loose the force and strength which was expected by them; and may make a Debtor look and talk very big, and seem to be a man of mickle estate, till the Registring of one *Bond* invite many an other; the blast of one *Horn* set others on *Tooting*, and the several Captions and Compriſements, strive who shall

ſhall firſt take him in peices; and drive him and his Creditors out of that opinion; who when they lend their Money, cannot foreſee Troops or Squadrons of *Bonds* with Clauſes of Regiſtration, which lying hid and unregiſtred, may by a ſudden Regiſtration, charge and utterly rout the hopes and ſecurity of the moſt wary Creditors.

And will then be induced by their loſſes and troubles, to believe that their Securities are but as ſhadows of Securities, or like the Apples of *Sodom*, quickly falling from a beautiful or comely outſide or appearance, into an ill ſavoring Cinders or Aſhes; and that they have with *Ixion*, embraced but a Cloud or Vapor, inſtead of their better expectations, and cannot be ſafe; where *Bonds* with as much as a Judgment or Decree in them, upon a failer of payment, may lie hidden or concealed, and be made to be afterwards an Incumbrance or Decree, upon the pleaſure or occaſion of every unkinde Creditor, who cannot be alſo in any good Condition, when he muſt be

put

put to ſhufle with other Creditors, and get Priority, as well as he can, upon the firſt diligence. And had need to be well aſſured of the favor or impartiality of the Lord or Maſter, Friends, Dependers, Kinred, or Relations of the Debtors, or that the *Ruling Presbyter* of the *Claſſis*, by ſome undeniable requeſt ſhal not perſwade or compel them to be judged or tryed for their money by himſelf, or ſuch as he ſhall appoint to bring them to a prejudicial end or concluſion. And if they ſhould be able to eſcape all the Partialities, Alliances, and Dependances, which will lie in the way, and be a hinderance to their obtaining of a Judgment, Decreit, or Letters of Horning and Caption, and get thorow the *Forreſt* or *Thickets* of their *Bills* of *Suſpenſion*, and obtain a Compriſement and Seiſing of the Lands and Eſtate of the (by that time) well breathed Debtor, the bleſſings which their Law hath afforded them, tarries not then alſo with them; unleſs they can by Petition or favor of the *Superior*, of whom the Lands are holden, procure him to admit them to be their Tenants,

Tenants, or compel him by Proces to do it, which brings into the Liſts a freſh and a more potent adverſary, attended with all his *Clans*, Kindred, and Dependers, who being many of them, and not a little troubled with the Debtors diſeaſe, will be ſure to contribute all they can to the releif or cure of him, and help him to buſie the Creditor and make him at length to be as patient as his purſe.

And though their Regiſtring of all *Infeoffments* of *Seiſings*, *Diſcharges* of *Reverſion*, *Regreſs* of *Reverſions*, *Aſſignations*, *Renunciations* of *Wadſets*, and *Grants* of *Redemption*, are by an Act of their Parliament, in the year of our Lord 1600, to be Regiſtred in the Bukes of the Lords of *Seſſion* within Forty days next after the making and perfecting thereof, or to be null and void; and may ſometimes ſhew what Tranſactions and Engagements have paſt betwixt the parties in ſuch kinde of Inſtruments, which are ordained to be Regiſtred, yet not the many private *Covenants*, *Agreements*, and *Alterations*, which have paſſed, or ſhall afterwards paſs betwixt them in

Instruments or *Writings* not Regiſtred, may be as far to ſeek as the Conſciences of thoſe that break the Agreements contained in them.

And as great a Security as ſome of that Nation would fancy the Regiſtring of their Bonds and ſuch kinde of Deeds to be, is ſo little made uſe of, as the number of their Regiſtred Bonds in the year 1589. were leſs then Two hundred; and from the firſt of *July*, 1637. to the Ninth of *November* following, but about Four hundred and eleven; and their Deeds or other Inſtruments appointed to be Regiſtred (upon the penalty of being annulled or rendred as nothing) do not appear to be the Tenth part of what are made in the Nation, and are never put to the trouble of being Regiſtred, which may happen either by the Drudgery and Slavery of the Tenants holding in Vaſſalage, or their being diſabled by their Laws to alien their Lands, or ſo much as to make any tranſactions or agreements concerning them, without the Licence of their Lords, who cannot alſo alien without the conſent of their Vaſſals,

their

their Dependencies or Subjection to the many little Courts of their Landlords or Superiors, or the charge and inconveniencies of ſuch a troubleſome way of contracting or bargaining, the no great benefits are had by it, and the unwillingneſs which moſt men may have to put themſelves out of the Reaſon and Mercy of the Law, into the power and cruelty of unmerciful Creditors.

And that Act of Parliament (*c*) for Regiſtring of all Inſeoffments, Aſſignations, Grants of Redemption, and other Deeds and Writings therein mentioned, being ſo afterwards qualified and altered by a ſubſequent Act of Parliament in *Anno* One thouſand ſix hundred & ſeventeen, as it was then declared, *That it ſhould not be neceſſary to Regiſter any Bonds and Writs for making of Reverſions or Regreſs, unleſs Seiſing paſs in Favors of the Parties-makers of the ſaid Bonds and Writs; in which caſe they are to be Regiſtrate within ſixty days after the date of the Seiſing; and that the Extract of the ſaid Regiſter ſhall make Faith in all Caſes, except where the Writs ſo Regiſtrate are offer-*

(c) 22 Parl. Jac. 6.

ed to be improven: And if the Writs appointed to be Registrate, shall not be duly Registrate within the time limitted, they are in that case decerned to make no Faith in Judgment, by way of Action or Exception in prejudice of a third party, who hath acquired a perfect and lawful right to the said Lands and Heritages but without prejudice always to them, to use the said Writs against the Party-maker thereof, his Heirs and Successors: And also ordained, That that Act should not extend to Instruments of Seisings and Reversions therein contained, Given by the Provost and Bailiffs of Frie, *Bourgs Royal, nor to na uther Heritable Writs thereof, nor to Reversions Incorporate in the Body of Infestments made to the persons against whom the Reversions are used; and that if any Renuntiation or Grants of Redemption, which shall happen to be consigned in Proces betwixt parties, shall be Registrate within Sixty days after the dates of the Decreits, whereby the same shall be ordained to be given up to the parties, having right thereunto, the same shall be sufficient.*

And giving onely a Preference or Priority

rity againſt another perſon who claims by ſome other Purchaſe or Title, doth neither make the unregiſtred to be void againſt the party that made it, nor give the Regiſtred as it doth in *England* in the Inrolment of Deeds, of Bargain and Sale, within Six moneths after the Acknowledgment, the benefit of Livery and Seiſin to the Grantee or Purchaſer, (which the people of *Scotland* have much ado to obtain of their many Lords and Superiors: And in *Scotland* is ſo eſſentially neceſſary as *Nulla Seiſina nulla Terra* is a Rule or Maxime amongſt them, and is to be done with the Formality of delivering a Stone and Earth, or peice of the Land purchaſed) nor any Attornment or Relation back to the day of the acknowledgment, but is ſo barren and fruitleſs, as the Regiſtring of ſuch Deeds or Inſtruments doth onely make Faith where they ſhall not be contradicted, And if they be not Regiſtred within the time, or not at all, are good againſt the Makers, but ſhall not be uſed by way of Action or Exception againſt a third party, who hath acquired a lawful

and

and perfect Right, and ſhall if not Regiſtred, be good at any time; where it ſhall in Proces or Judgment, be conſigned or decreed to any party having right. So as that way of Regiſtring leaves many an Out-lying and ſleeping Incumbrance undiſcovered, which the Regiſtring of thoſe Deeds cannot prevent; and moſt of their Regiſtrings, either as to Bonds or Deeds, do ſerve for little more then to put charge and trouble upon men that ſhall have an affection to it; and but as a memorial or a *Mercury*, or thing ſet up in a croſs or doubtful way to ſuch as ſhall happen to come that way, and be ſo lucky as to meet with it, or ſo induſtrious as to ſearch on purpoſe for them in many places far enough diſtant one from another, as in the Shrieffdoms of *Orkney* and *Yeatland*, *Aberdene*, *Sterling*, *Fife*, *&c.* and many other places in the Act appointed for Regiſtrations, beſides *Edinburgh*, where the parties have an option or election to Regiſter, and finde more conveniencies to have it there done then in the County, or far diſtant Regiſtries.

And

And notwithstanding all their pretended ways of preventing or clearing Incumbrances which they do so much brag of, do by an avowed and daily practise well enough know how to incumber and trouble one another, and their estates with accumulating (though they have two Acts of Parliament which forbid the maintaining of (*d*) querels) old and forgotten Rights and Titles by, buying in or procuring Assignations of old Infeoffments, Bonds, Debts, Compriſements, Wadsets (or Mortgages) Judgments and Decreits satisfied, and discharged, or out-living the memory of man, or any witnesses, *nomine pœnæ* and penalties (of which their jealousie and little Faith in one another, affords no small store in all their Instruments and Contracts) and reckoning and creating to themselves as much right or title as they can against such as for want of Money, Friends, Evidences, or Witnesses, shall not be able to draw themselves and truth out of the *Pit*, in or upon which they industriously cast all the *Dirt* and *Rubbidge* they can do by a kinde of Merchandising and *Truck* of *Incumbrances*, and buying and

(d) Stat. 1. Rob. cap. 22. Mal. c. 2. c. 144.

and ſelling of old and forgotten unjuſt rights, titles, or pretenſions, awake and revive thoſe that were before faſt enough aſleep, and endeavor thereby to make a *Fence* or *Bulwark* about a bad title, and worſe Conſcience in the purſuit of a relief and remedy whereof, no ſmall ſums of money are by thoſe who are concerned therein, (whilſt they with many a *tired purſe*, *journey*, and *ſupplication*, drag on their hopes and Eike out their patience,) expended in their charges at Law, which are not *ſwa* far, fra, *meikel*, or burthenſome, as the well-wiſhers or lovers of that kinde of Law and proceedings would perſwade us.

CHAP. XXII.

Of the Charges in Law Suits, or Proceedings in Scotland.

FOr beſides their paſſing many of their Inſeffments, and more of their Writings then we do in *England*, under the *Signet*,

Signet, *Privy* and *Quarter Seals*, and their *Great Seal*, which is allowed to exceed as far as three times the price of the *Privy Seal*, the *Fees*, or *Prices* paid, as they call them, for the *Signet* and *Privy Seal* are as well for the Writers, as the *Seals* in many things rated according to the qualities, degrees, and number of names of those that are to take benefit by them, greater or lesser value of Lands therein contained, and in *remissions*, according to every crime repeated in them.

Scotch Money.

As *inter alia* at the Signet for a Summons	0	10	0	*Signet:*

Which is more then are paid here at our Great Seal and Green Seal for common and ordinary Writs.

For Letters of Inhibition and Arrestment	0	16	8
For Letters of Horning, except Letters of Law, Burrowes, and Criminal Letters	1	11	8
For a Relaxation	0	10	0

And accordingly for every person relaxed

laxed or compounding at the discretion of the Keepers of the Signet (which our Laws permit not).

	Scotch Money.		
For an Infeoffment or Confirmation of 10 l. Land or under	2	00	0
For an Infeoffment or Confirmation of other Lands under a 30 l. Land or Barony	2	10	0
For Comprisings	2	00	0
For a Remission to a common man	1	00	0

And accordingly for every person contained in the said Remission.

For every crime for a Remission to a Baron	2	00	0
The Escheat of a common man passing the Privy Seal	1	6	8
For every person more of that rank	0	13	4
The Escheat of a Baron	2	13	4
For every person more of that rank	1	6	8

Privy Seal.

(e) *Ordinance of the Lord Protectors Council in* Scotland, 1 Oct. 1655.

The

	Scotch Money.		
The Eſcheat of a Lord	8	00	0
For every perſon and name more in the Signature	4	00	0
More for a Parſonage then a Viccarage, more for an Abbacy then a Parſonage			
To the Director of the Chancery for the Writing and Regiſtring of a Confirmation or Infeoffment of Land of Five pounds or under, with the Precept of Seiſing duly and orderly paſt	4	00	0
For Ten pounds Land or under, with the Precept of Seiſing executed	5	00	0
For the like under Thirty pound, or a *Barony*	6	00	0
For a Barony	10	00	0
And for every Barony more therein contained, ſo as the whole exceed not 20 l.	5	00	0
For a Remiſſion or Reſpite to a Yeoman	2	00	0

Director of the Chancery.

(f) *Per Ordinance of the Lords of Seſſion in An.* 1606. *Confirmed in Parliament in An.* 1621. *And by Ordinance of the Lord Protectors Council in* Scotland, 1 Octob. 1655.

(g) 23 *Parl.* 7 *am* 6. *An.* 1621.

	Scotch Money.
For every perſon more then one contained therein	1 00 0
A Baron	4 00 0
And every perſon of that rank more contain'd therein	2 00 0
To a Lord	6 00 0
And for every perſon of that rank, more then one contained therein	3 00 0
For Commiſſions paſſing the Quarter Seal for ſerving of Brieves in favor of a Yeoman	2 00 0
In favor of a Baron	4 00 0
In favor of a Lord of Parliament	6 00 0
For the Regiſtrating a Retorn to a common man	0 13 4
A Baron	1 06 8
To a Lord	2 00 0
For Precepts upon the Retorn for Lands, under a Ten pound Land	2 00 0
If above	4 00 0

(h) *Ordinance in An.* 1655.

For

Scotch Money.

For the ſecond and third Precepts	1	00	0

To the Writers of the Signet.

For ane Signature of whatſoever Inſeoffment, Reſignation, Confirmation, or Erection, for the firſt ſheet thereof	1	10	0
For every ſheet more	1	00	0
Ane Preſentation to a Parſonage and Vicarage	0	13	4
Ane Signature of a Biſhoprick or Abbacy, containing a ſheet of Paper	1	10	0
For every ſheet more	1	00	0
For a Summons of a ſheet of Paper	0	13	4
For every ſheet more	0	10	0
For common Letters	0	10	0

(i) *Ordinance of the Lords of Secret Council. An.* 1606.

To the Writers to the Privy Seal.

For the Eſcheat of a common man	0	13	4

For

Scotch Money.

For every perſon more of that rank, not exceeding Ten	0	06	8
The Eſcheat of a Baron	1	06	8
And for every perſon more of that rank, not exceeding the number aforeſaid	0	13	4
The Eſcheat of a Lord of Parliament	4	00	0
And for every perſon more, not exceeding the number aforeſaid	2	00	0
Signature of a Vicarage	1	00	0
Of a Parſonage	2	00	0
A Remiſſion or Reſpite to a common man	0	10	0
And for every perſon more of that rank contained in the Signature	0	05	0
To a Baron	1	00	0
And for every perſon more of that rank contained in the Signature	0	10	0
An Infeoffment of Five pound Land or under	1	10	0

(k) *Ordinance of the Lords of Secret Council of Seſſion, 1606.*

For

Scotch Money.

For Ten pound Land or under	2	00	0

To the ordinary Clerks of the Session.

For common and ordinary Extracts	0	13	4	(1) *Ordinance in An. 1655.*
The Registration to pay as much	0	13	4	
For Registrating of an Obligation	0	13	4	
For the Extract thereof	0	13	4	
For an Act of *Litis Contestation*, and for every sheet of the *Act* and Decreet	1	00	0	

Being our Twenty pence, and more then the Fees taken in *England* for Copies of Depositions and Decrees.

To the Register of Seisings and Reversions.

For every Leafe of the Register	1	6	8

For Registring of Seisings and Reversions, which being about our 2 s. 3 d. exceeds the Fees

Fees taken in *England*, for drawing or entring Deeds or Decrees.

To the Sheriffs Clerk.

Scotch Money.

(m) *Ordinance* 1606. For a Precept of *Arrestment* with the Seal thereof } 0 6 8

Which is more then our allowed Sheriffs Fee for a common Warrant.

To the Clerk of the Bills.

(n) *Ordinance*, 1655. For every Relaxation *per se* 0 6 8

And for every person therein contained accordingly.

To the Commissary Clarks.

(o) *Ordinance of the Lords of Secret Council and Session in An.* 1606. *ratified in the Parliament* 1621. Four pennies Scotch for the putting of an *Act* into the *Book*, and further as the Writings shall be in quantity, and the Extract of the same as much; and further at the discretion of the Judge } 0 3 4

For

For pronouncing of Sentences in ſmall Actions of the avail of 20l. Scotch Money.	0	3	4
And of Sentences in Cauſes of greater avail	0	6	8

All which, if duly conſidered and put together, with many other Fees and Expences not here enumerated, together with the *cravings* and *takings* of *Bailiffs* and *Meſſengers*, Arbitrary demands or takings of the Clerks and under Writers, Solicitors or Agents, as they there call them. And no ſmall Fees of their Publick Notaries, who can take Half-a-crown Engliſh for writing a Certificate or Atteſtation of Twenty eight Lines, with few words in each of them; and Four or five ſhillings for firming or putting a hand to it; and in a frequent uſe and employment in many of their Law-Suits and Proceedings, do as the Notaries in *Holland*, *Flanders*, and other forein places, not think any of their and labors to be ſatisfied with a little.

The Poverty, Peaſantry, and Vaſ-

ſalage of the Tenants and common ſort of people of that Nation, their great want of Money and Silver which may make ſmaller Fees to be big and unweildy; and that more labor may be had there for a little money where it is ſcarce, then where it is more plentiful; may without any force or impoſition put upon any mans belief, be underſtood to be ſo large enough and ſufficient, as that they might have beſtowed a better care and dreſs upon their *Records* and *Regiſtries* of their Law matters, then by their homely Recording and Regiſtring of them, to render & expoſe them to be but rather as ſo many *Abortions*, *Out-caſts*, and *Neglects* of *Time*, then Records or Regiſters, which being for the moſt part (ſome few little Parchment Bukes of Memorials, onely excepted) but *clad* in Paper, and Reaching very little beyond One hundred years laſt paſt; and their Writs and Proces as ſo many ſcraps and fragments, naſtily crouded and crammed together, in ſordid, broken, and *tattered Pokes*, as they call them, or little *Bags* of *miſuſed Parchment*

or

or *Canvas* made them whilſt they were in the Tower of *London* (though with great pains and care there, put into a more cleanly and orderly cuſtody) ſeem to be but as the *miſuſage* of *Records* and *Regiſtries*, and *deformity* it ſelf impriſoned and taken captive.

And if their Fees and Prices were ſo ſmall or eaſie (as they *talk* them, but are not) are by the many *Traverſes* and *Circuits* of their Laws (in which the Fees of their Advocates and Lawyers, are for their ſeveral Pleadings or Conſultations, but Twenty ſhillings ſterling, or thirty, and ſometimes forty, according to the care and merit of the *Cauſe* or *Advocate*) and the tedioufneſs of their proceedings, with the *drinking pennies*, or *money* demanded by their *Lads* and *Writers* (who can look upon their Table of *Prices*, and yet crave and finde a way to take all they can get above them) too much ſwelled up and made to be a large *foot* or *ſumma totalis*, at the end of the Clients compt or Reckoning; which a too ſmall allowance of Charges to be rated and laid upon the

vanquiſhed party, much after the rate or proportion of a *Pigmey* to a *Giant*, may make it to be heavy and burdenſome enough, and give the winner little cauſe to boaſt of his victory; or to lift up his thoughts, and think he is upon his *high horſe*, when he findes himſelf in a worſe condition, then when he firſt began to neglect his other affairs, and run after his hopes and expectation.

Nor are the proceedings in the Laws of *Spain*, if they were better conditioned then they are, ſo cheap or eaſie as to ballance the delayes or many attendancies, which by woful experience are found to be in them, or to invite us to an exchange of that we have in *England* for them.

CHAP. XXIII.

The Charges of Law Suits in Spain, *are very coſtly and burdenſome.*

FOr notwithſtanding the *outſides* and pretended Severities of their *Regladementes*,

mentes; as to allow a *Notary* but Twelve pence or fifteen pence for making of a Bond, and keeping a *Protocol* or *Regiſter* of it, or the like, whilſt he walking amongſt his *Clerks*, and dictating to one to make a Bond or Petition, and to another, to enter it, makes it to be done with a care, but proportionable to his pay. And that by a *Pragmatica* of *Philip* the Second, King of *Spain*, in *Anno* 1569. it was ordained, That *Notaries* ſhould upon pain of reſtitution, receive nothing but what was by Law allowed and appointed them, *Etiam ſi ſponte & libere aliquid ultra præſtetur*, though it were freely and without asking, given; and were ordered to underwrite in every of their Inſtruments (*p*) or Writings, what was paid them.

(p) *Juxta Text in l. 6. tit. 25. l. 4. Recopil. & in tit. 27.*

And by a *Proclamation* or *Ordinance* of *Philip* the Fourth, King of *Spain*, in *Anno* 1623. which commands *the former* Laws *and* Regulations *to be obſerved, under the puniſhments therein contained*; (which many of their fierce Laws have not always the luck to be) *and the loſs of their* Offices; *and if they be not the* Propietors *thereof*,

to

to endure four years baniſhment; that the Clerks *in the* Chanceries *and* Audiencias *do not take any* Fees *in* Suits; *neither for the* Books *which ſhall be drawn, nor the* Proofs *which ſhall be made, nor for following the Suit, until the cauſe be adjudged* (q), (which may teach them to reckon with Intereſt) *and they ſhall be Taxed or Aſſeſſed by the* General Aſſeſſor, (which may coſt the Clients in their trouble and attendance more then they are like to ſave by it) *under the pain of being deprived of their* Offices, *and diſabled to execute any others; and that the* Judges *do not decree nor determine any Suit, wherein it ſhall not be accompliſhed, and may not take money for making* Reports *of Suits, but onely ſuch as by the* Statute *ſhall be due unto them for the Entry of their Suits, under the penalty of the loſs of their* Offices, *and to be baniſhed for four years, if they be not* Proprietors.

(q) *Chapters of Reformation by* Philip *the Fourth, in An.* 1623.

And that they are ſworn to obſerve their *Regla's*, do give Bond to be true and faithful in their Offices, and run no ſmall hazard if they do misbehave themſelves, are to have their Books and Papers ſearched

ed into, and perused by an ordinary *Visitor* every year appointed, and an *Inquisitor* every three years, who is to take in and examine all Complaints which shall be against them. And if *Gifts* or *Bribes* do not thicken or hinder his sight, is grievously to fine and punish such as he shall find to be guilty; and that their *Judges* or *Inquisitors* own evil Actions or Connivances, are also as strictly to be examined upon any Complaints which shall be made against them; and that by their *Laws* and *Sanctions* he that gives a *Bribe* to the *Judges*, as well as to their *Clerks* or *Officers*, is not onely to be severely punished, but lose the benefit which he expected by it.

It is well enough known, and all that shall have occasion to try it, may be well assured, that the *Notaries* who are a certain and set number in every *City* and *Province*, and thereby intituled not onely to most of the business and affairs of making *Instruments* or *Writings*, but to the examination of *Witnesses*; and as to the greatest, and ministerial, and writing part of the *Proces* and proceedings before the *Judges*

or

or their *Delegates*, do manage moſt of the Cauſes, and prepare them for hearing, do by a multiplicity of buſineſs tranſacted in their Offices, make their Fees, which otherwiſe ſeem to be too ſmall and ſlender, ſo to recompence them in the bulk or number as they can, either in the contemplation of the gain it ſelf; or for an employment of their wits and knavery *colore officii*, afford to give Five hundred pounds ſterling to be made a Notary; and are if they could be kept within the compaſs of the allowed Fees, the better enabled to endure them, and to be leſs greedy then they are, by the cheapneſs of their Rates or Proviſions of livelihood, which are ſo eaſie, as he that hath but nine *Maravedis*, which amounteth but to little more then an Engliſh penny, for copying or ſcratching of a ſide of Paper with Four or five words in a Line, few Lines and ſhort Paper, may for that buy two pound of *Grapes*, and for Three pence a Quart of Wine; which being by neceſſity of the heat of the Countrey to be mingled with two Quarts of Water, makes the ſuppoſed

Cheap-

Cheap-Writer a good Beverage, Fleſh-meat being ſo little uſed amongſt them, and ſo ſcarce, as he is a *Don* of none of the ſmalleſt ſize which can purchaſe any great quantity of it.

Will notwithſtanding not do but as their Fees and over-plus Rewards ſhall perſwade them, and fear not to take it, becauſe, beſides the nature or cuſtom of the *Spaniards*, in hating to inform, as much as to be informed againſt; and that many of them having in their employments and places in *Naples*, *Sicily*, *Millan*, and the *Weſt-Indies*, inriched themſelves by pillaging and exacting of the people, do take it to be unworthy of their newly acquired greatneſs, to reſtrain others from that wherin they ſped ſo well themſelves; and that it is as dangerous for him that gives a Bribe to be diſcovered, as to him that receives it; and the *Advocates* and *Notaries* doing moſt or giving the ſooneſt diſpatch, and uſing the better diligence, where they are beſt paid or promiſed, it being there uſual enough, to promiſe them over-plus rewards out of the *victory* or *ſucceſs* of the cauſe;

and to make them preſents according to the value, eſtimate, or difficulty thereof. And as Cuſtomary for them, in the mean time to ſend to their Clients, if they do not bring it, for any thing they want within the reach of their Trades or Condition; as for Cloth, Wines, Candles, *&c.* And though the *Advocates* ordinary Fee for pleading be there but Ten Reals or Five ſhilling ſterling; yet for matters of more ſerious advice, they have Twenty ſhillings ſterling; and for what they fall ſhort in their other Fees have it plentifully recompenced with the Cuſtom of the Courts of that Nation, which is not to grant things (as are in *England* of courſe and *Ex Officio* by Miniſterial Officers) without Petitions and Orders, as to arreſt a Creditor, or the like; and the Petitions firſt to be peruſed by an *Advocate*, who in a multitude which every day do attend their Houſes, are no looſers by taking ſo ſmall a Fee as Four Reals.

And though the *Client* hath a power to elect and make choice of his *Notary*, or *Clerk*;

Clerk; yet he knowing that he will not work but for good Fees, and cannot be otherwiſe aſſured of his fidelity, if the adverſe party ſhould offer him more, is inforced to go as high as his *Purſe* will at firſt permit him; otherwiſe in the examination of his *Teſtigos* or Witneſſes, he ſhall have the truth to be *ſtifled*, ſuppreſſed, or perplexed. And if the Teſtimony be well expreſſed or written, will if he be not diligently watched by the party himſelf, or his *Advocates*, either not read what is written, or miſread it to abuſe or miſlead the Truth and the Judges. And if he be to take a Bond or Security, by order of the Judges, will, if he be not well paid, miſlike all the Security which ſhall be tendred, though the beſt, or all the men in a Town ſhould be brought unto him one after another.

And if any Complaint be made, it is by their Law to be proved by two Witneſſes which are hard to be found in a matter of Bribes or exceſſive Fees, for *Probatio plena & legittima* a full and legal proof is to be by two Witneſſes (r), *Et ſi ſponte ſe offerunt*

(r) *Secundum Gloſſe in cum de indebita verbis legitim: F. de probat.*

ferunt presumantur ſuſpecti (s); and if they teſtifie of their own accord, are held to be ſuſpected; Deeds may be denied *Per duos teſtes* (t) *omni exceptione Majores etiam ſi non ſint ex deſcriptis in inſtrumento*, by two credible Witneſſes though they be not named in the Deeds or Inſtruments.

(s) *In l. quæ omnia ſect. 1. F. de procurat. Text in Auth. de Teſtibus.*

(t) *Decius in cap. 3. loco numb. 11. de Probat.*

The *Accuſation* muſt be (u) *Per viam Actus coram Tabellione* before another *Notary*, (who being ſenſible of his own pranks and condition, is not like to be very fierce againſt one that trades in the like offences; the Judge cannot *Cogere offenſum* (w) *ad accuſandum* compel the party accuſing (as we do here) to proſecute *Nemo cogitur teſtificari contra conſanguineum uſque ad ſextum gradum* a Kinſman to the ſixth degree, is not to be compel'd to be a witneſs. The Judge *in inquiſitione generali interrogare debet teſtes ſolum modo de delictis notoriis & manifeſtis non tamen de* (x) *occultis nec teſtes jurare debent detegere occulta* upon a general Inquiſition is onely to examine Witneſſes concerning notorious offences not hidden or private. *Alioquin* (ſay their Lawyers) *poterunt uti, ſubterfugio*

(u) *Covarru. lib. 1. Variarum, cap. 11.*

(w) *Juxta Text. in l. 2. F. de Accuſat.*

(x) *Juxta Text. in c. qualiter & quando in fine de Accuſationibus.*

terfugio & amphibologia verborum judicemque eludere reſpondendo ſe illud neſcire, otherwiſe they may uſe evaſions and equivocations, and deceive the Judge in anſwering, that they do not know. (y) *In dubiis Judex potius debet abſolvere quàm condemnare reum.* A Judge ſhould rather incline to abſolve the Delinquent, then to condemn him in things doubtful, (z) *Renuntiato termino probatorio & poſt ſententiam definitivam Rei teſtes & probationes admittuntur*; after a Renuntiation of the Term Probatory, and a Sentence definitive Witneſſes may be produced on the Delinquents part.

(y) *Paul Caſtrenſ. in Conſil.*

(z) *Roias in ſingular. 40. & in lib. 1. ſect. ſi quis ultro F. de quæſtionibus.*

And when their Laws have ſometimes allowed as many Exceptions againſt Witneſſes as amount to a (a) *Hundred*, as amongſt many other (b) *quia infames aut ebrii*, becauſe they are infamous or drunkards, *Enemigos Capitales*, malitious or mortal enemies before or at the time of their examination; or that they delivered their Teſtimony *appaſſionadamente en eſta cauſa*, paſſionately in that cauſe, it will be no great piece of buſineſs for a *Notary* to put by,

(a) *Beſanius in Conſuetudinibus, c. 8. art, 7. & Covarr.*

(b) *Gonzal. Suarez. de Paz. 1. part. 1. Tom. 9. Temp.*

by, deter, or get off from his accuſers, and then alſo it will not be a little dangerous for thoſe that accuſed him.

Who if he clear himſelf, will have his damage (c) *Attenta qualitate injuriæ & perſonæ*, according to his quality and perſon, *ad damna expenſas & intereſſe pro injuria eidem illata & ad omne lucrum quod lucrari poterit ſi talis injuria ſibi non illata fuiſſet*, and expences for all that he loſt by a falſe accuſation, or might have gotten, if it had not been. And if any Complaint could be made out by any Proof or Evidence to make him a *Cohechador*, or guilty of Exaction, the Complaint is to be exhibited, but at certain times limited before, when the complainer or his witneſſes, memorials, or deſire of revenge may die, or be to ſeek. And if the *Notary*, as commonly he will be ſure to do, can but make the *Inquiſidor* or *Viſidor* his Friend; who like the old *Fox*, ſet to examine and ſit in judgment amongſt the *Poultry*, and to enquire of them what Complaints they or any of their Friends or Kinred have againſt the yonger *Foxes* or *Cubs*, will be ſure to take

(c) D. D. Communiter in cap. 1. de injuriis Arcon. Gomez 3. Tom. Variarum, cap. 8. num. 7.

take a care to make himſelf no looſer by it, doth not onely eſcape all the Complaints, ſhall at that viſitation be made againſt him, but is ſure to continue his place again till the next *Viſidor* cometh (which is not often) and be ready upon all occaſions to cut the *Muſtachoes* ſhorter of him, or his *Atteſtadors*, or Witneſſes that accuſed him, and to do miſchief to all their buſineſs and affairs; many, or ſome of which, have no other way to paſs, but through his Office or Hands.

So as their over rigid *Reglas*, or too little allowance of well earned or neceſſary Fees, which they think to be as unreaſonable to keep, as a *Faſt* in the time of their *Carneſtolendas*, *Shrove*-tide or *Anti-Lent*; and as impoſſible to be obeyed, as for a *Spaniard* not to be proud of a little; do but in conſequence and daily experience, make them to break through and keep no rules at all, eſpecially where the King and his Grandees, the Nobility, and the Richer part of the people, have all or moſt part of the money, and the common people ſo little; where the

the Gold and Silver from the *Indies* is carried and sent away, to maintain and kindle Wars and Contention in other Countreys, and the Natives left onely to their National pride and boasting, and to content themselves with their *Quarts* and *Maravedis*, which are made of Brass and Copper, until an Office, or place, or employment, can be gained to better their condition, when like *Dogs* or *Cattel*, which being kept hungry, do break into other Mens Houses and Lands, they do that which they should not, or as *Gally-slaves* long kept at Sea with mouldy Bisket and stinking Water, keep no order in their Dyet when they shall come to a better. The greatest care which then they take, being to reimburse themselves as fast as they can the money which they or their friends paid for their places, and preferments, to enrich and *aggrandize* themselves, and make the best use they may of fair weather, before any foul happen; where when Opportunity which makes a Theif, and Necessity which doth many times, though it should not *cogere*

ad

ad turpia and Pride, which makes Neceſſities; ſhall have done their *homages* to their ſeveral Temptations, their *Reglas*, or too narrow Limitation of Fees, do get no better obſervance, then their rigid Laws of prohibiting Gold, Silver, or Bullion, to be carried out of *Spain*, upon pain of Confiſcation of the Ship, and all the Freight, which doth not deter men by the help of Conniving-Officers, to carry and convey to Sea all that can be gotten; or to confiſcate Goods not cuſtomed; of putting down or forbidding *Farthingales*, worn by their Wives or *Donnas*, their *Pragmatica's* of Limitation of Portions or Dowries, as he that hath Five hundred thouſand of *Maravedis* of Rents *per annum*, which is not much above our Three hundred pounds *per annum* ſterling, not to exceed a Million of *Maravedis* (*d*) in Dowry with a Daughter, which is little more then our Six hundred pounds ſterling: And that *Suiters* at *Law* who are bound to Record the time of their entrance and departure before the *Secretary* of the Coun-

(*d*) *Chapters of Reformation by* Philip *the Fourth.*

oil, where the ſuit ſhall depend, may not reſide in the Court in any one year above thirty days, which notwithſtanding all their pretences, or it may be intentions of a very quick diſpatch, if it could be obſerved, do but lengthen out their delays to the enſuing years, and in that and other their attempts of making ſevere Laws, do ſpeed no better then their jealous penning up their Wives, and keeping a watch over them; or then the *Agrarian Law* did amongſt the *Romans*, which when it would allow no more then Five hundred Acres of Land to be enjoyed by any man, took ſo little effect, as the people afterwards complained, that they could get but (e) two Acres a peece, and ſcarce ground to build a neceſſary Houſe, and to bury their dead in: And *Lycinius* himſelf who was one of their Tribunes, and a pretended Preſerver of their Laws and Liberties, and thought that the more care that he took for himſelf, would be the better for the people, was ſhortly after catched or taken with miſcounting or having a thouſand Acres of Land, purchaſed by a trick in his

(e) *Livy, lib.* 142. & 261.

Sons

Sons name, did in the unpracticableneſs of that *Levelling* humor, which after the many Seditions and Tumults which it made to little purpoſe; its often dying and reviving again the throwing of *Spurius Caſſius*, a man otherwiſe well deſerving of that Commonwealth from the *Tarpejan* Rock; (*f*) ruine of the buſie and popular *Graochi*, and the original; as ſome of the learned have been of opinion of the bloody diſorders and proſcriptions of *Sylla* and *Marius*, prove to be as ſhort lived and undurable, as that of the *Roman Cenſors* overſeeing Apparel, Diet, and Expences, which like Waters impriſoned, did ſoon break their Banks, and yield up all thoſe Severities to a looſe and *Aſiatick* Luxury, or as little laſting and effectual, as the *Oppian* Law which made it death for the *Roman* Dames or Wives to drink Wine.

(*f*) *Dionyſ. Petav. lib. 3. cap. 5. 83. & lib. 4. cap. 150, 151.*

So as all the comfort which the Men of *Spain*, or ſuch as do there trade or inhabit, do get by the pretence of a cheap going to Law, is no more, but that the Proceſs and Suits, are oppreſſive, chargeable, and intolerably tedious; and may have reaſon to

believe, that Sir *Charles Cornwallis* (g), Leiger Ambaſſador for *James*, King of *England*, in *Anno* 1608. had ground ſufficient for what he then heavily complained of by his Letter to the King of *Spain*, *That in that Kingdom it was known by experience; that the Suits in Law were immortal; that the Engliſh Merchants were made a prey to the hungry and greedy, upon pretences, not ſo much as probable and falſe ſentences given, and never reprehended or found fault with:* That the Rule is too ſhort, and the practiſe too long; and that he that hath the longeſt breath and Purſe, is ſure to come to his journeys end upon good conſiderations; and ſo to weary and tire out his Adverſary, as he muſt be glad to be rid of him upon any conditions.

(g) *Vide Sir* Charles Cornwallis *Letters amongſt Letters of illuſtrious Perſons and Miniſters of State. Printed at* London, An. 1654.

For when men ſhall deſerve more, and their labor ſhall exceed the allowance of their pay, or recompence, and the neceſſities and occaſions of people ſhall bring them to require or make uſe of them, there will be many little back Doors or Poſterns made or found out, where the Fore-gate or Door is too ſtraight or narrowly

narrowly watched; and an asking on the one ſide, or a voluntary offering and giving on the other, or ſome neat ſhift or artifice invented to ſatisfie the craving and greedy appetites of thoſe that are kept hungry, or ſome invention or way found out to remove their dulneſs, unwillingneſs, auſterities, delays partialities, or pretences; and if thoſe that ſhall have to do with them, ſhall not be inforced to find out irregular and by-ways to get a diſpatch of their buſineſs, and to be as Pandors and Pimps to their corruptions; they themſelves will not want devices and contrivances to acquire Bribes, Preſents, and Friendſhips, and to lay hold of every thing that comes in the way of a raging and neceſſitated deſire of gain, (*h*) *Padre Paulo Servita* the Learned *Venetian* well obſerving, *That every one doth willingly endure a reaſonable Bond, but will from an exceſſive one, ſeek by all means, though indirect, to free himſelf; and if there be no ordinary means, will run to extraordinary; and that the Gordian knot was cut, becauſe it could not be untied.*

(*h Hiſtor Inquiſition*

Thoſe

Those their severities of Laws producing no better effects than multiplied Tricks and Deceipts to delude them, which with that Nation are no less innovel or infrequent than for their fields to smell of *Rosemary*, and themselves of *Ajas* or *Garlick*, the daily heater of their cold stomachs, and a great part of the Food and Phisick of their common or poorer sort of People.

CHAP.

CHAP. XXIV.

Of the Fees and Expences in Law-Proceedings in Holland, *and the Confederate Belgick Provinces.*

AND as to the ſuppoſed cheapneſs of *Dutch* Laws or Proceedings, though a Friend of Mr. *Hugh Peters* writing in favor of the late deſign of bringing the *Jews* in again amongſt us into *England*, could ſtep out of his way to vindicate him from what Mr. *William Prynne* had juſtly charged upon him. That he had in his Book called *Good work* (*i*) *for a good Magiſtrate*, adviſed to burn all the *Records* in the *Tower* of *London*. And troubled himſelf as well as his Ink and Paper, to tell the World that Mr. *Prynne* had miſtaken or wronged Mr. *Peters*, charging him therewith; *When as*, ſaith the Vindicator, or Mr. *D. L. there is in that Book of Mr. Peters, which is of publick uſe and benefit, fit to be practiſed in a well-governed and Chriſtian Commonwealth* (*k*) *no ſuch poyſon as this*

(*i*) *Good work for a good Magiſtrate. p.* 3.

(*k*) Iſraels *condition and cauſe pleaded, or ſome Arguments for the* Jews *admiſſion into* England *by* D. L. 84.

this Spider (meaning Mr. *Prynne*) *hath ſuckt from it.* In *Folio* 33. where Mr. *Peters* ſaith he, doth onely ſay, *That if the premiſſes were carried on of the Law truly, Reformed, of Regiſters in every Pariſh, wherein every man may know and enjoy his own whilſt he lives, and be ſure his will ſhould be peformed when he is dead. It were beſt all Records that lie any where to hinder ſuch a ſettlement were burned, yea, the Records in the* Tower *that are the Monuments of Tyranny.*

Whereas, if he that can ſo patch and peece up Mr. *Peters* meaning, as he thinks, with words beyond his words or ſence, or any conſtruction which can be made thereof, would be but ſuch a Friend to truth, as to look well on the words of Mr. *Peters* in that *Folio*, as he calls it, of the Book called *Good work for a Magiſtrate*, he will not be able to finde the words or ſenſe which he is ſo willing to put upon the Reader; either as *Proxima antecedentia* or *conſequentia*, or the words which in the Vindication are ſo put together to help him out of his Error.

For

For in *p.* 33 of his miſcalled *Good work for a Magiſtrate*, Mr. *Peters* hath theſe onely words as they are there to be read in their ſeveral Paragraphs, preceeding and following one another, *viz.*

Why are not the Fees of Phyſitians ſtinted, and their help commanded upon a known price, I know they cannot ſuffer by it.

Wills and Teſtaments may be acknowledged by the next two Juſtices (he would have ſaid perhaps before the next two Juſtices) *before whom they may be proved without any charge, and then entred into the former Regiſter of the Pariſh, in a Book kept in every Pariſh to that purpoſe.*

This being done, it is very adviſable to burn all the old Records, yea, even thoſe in the Tower, *the Monuments of Tyranny.*

No Lawyer to plead at any Committee, &c.

And not content with that miſtake or failing, doth after much ignorant and cauſleſs railing againſt the Laws of *England*, and the Profeſſors thereof; confidently aver, that Mr. *Peters* had ſhewed to a Committee at *Weſtminſter* of ſixty of

the Parliament: In *Holland*, (*l*) *That paſt for two ſhillings for the whole Conveyance of Houſe and Lands worth Three thouſand pounds* (it is likely he meant (which the Faults of the Printer, or the ſenſe of the words will not allow him) that in *Holland* for two ſhillings the whole Conveyance of a Houſe worth Three thouſand pounds did paſs) *and at the ſame time Fifty five ſheets of Paper ſhewn for the Conveyance, coſt Fifty pounds but of Fifteen hundred pounds* (wherein we muſt take his miſtaken meaning to be for a Houſe or Land in *England* worth Fifteen hundred pounds; for a Conveyance is not properly or uſually ſaid to be of Fifteen hundred pounds in money: But whether for a Leaſe or Land worth that money, there could be no ſuch ſum of money expended, if the Land were not of a great yearly value, and a fine levied of it, unleſs at *Drury* Houſe (which Major *Jarvis* in his Complaint to the late Parliament, did not take to be an *Exempt* from remarkable failings) where till it was complained of, ſome of the *Clerks* or *Writers*, in an over great care, or ſome-

(*l*) Iſraels *condition and cauſe pleaded, or ſome Arguments for the* Jews *admiſſion into* England, *with a Vindication of Mr.* Peters *by* D. L. p. 88.

ſomething elſe in the making of the *Aſſurances* of Delinquents, or Commonwealths Lands, would mention many or every Room in a dwelling Houſe, with their Meaſures and Dimenſions, the Barns, Stables, Hen-rooſts, and Hog-ſties, ſcarcely eſcaping; and unneceſſarily ſo diſtinguiſh, recount, and enumerate the Quantities, Buttings, and Boundings of every parcel of Land, as they would be ſure to do him no harm who was to be paid by the ſheet, and according to the length, for making of the Conveyances) which they uſed like *Amalekites*, making them to pay extraordinary; and ſuppoſing that good Bargains might afford to pay larger Fees, took after the rate of Ten ſhillings a Skin to the Clerk for ingroſſing of them and their Counterparts.

Some of which being ſtretched out to Ten or twenty Skins of Parchment, and paid for after the rate of Twelve pence a ſheet to him who had the office or place for drawing or preparing Counſel of it (who was for that inhaunced drawing-fee, and ſome other acquirings of money the

wrong way inforced to give way to a more conſcionable Succeſſor) may probably be the Conveyances; the charges whereof Mr. *Peters* takes to be ſo *Gigantine*.

And as to the charge and coſtlineſs of Conveyances in *England*, or cheapneſs of Conveyances in *Holland*, where he muſt be acknowledged to have been no ſtranger, was certainly too ſudden in his own opinion, or took it too much upon truſt from the ignorance or raſhneſs of others, and might think he could prove that which will but prove him to have vented no ſmall *error* or *miſtaking* of his own.

For it is well known by a conſtant and daily practiſe, now and long ſince uſed amongſt the *Dutch*, and the *United Provinces*, and Recorded by ſome *Authors* of good note, who have lived amongſt them (*m*) and have not been unacquainted with their Cuſtoms and Government; that they do there upon every Alienation of Land or Houſes (in which their Ships, if of any conſiderable burden, are likewiſe reckoned as Houſes) pay the Fortieth penny according

(*m*) *De Statu Federat. Belg. Provinciar. cap.* 12.

according to the true value thereof to the Eſtates or Supreme Magiſtrates, towards the maintenance and defence of the Land or State, and the burdens thereof, and that in *Amſterdam*, beſides the Fortieth penny. There is alſo paid an Eightieth penny of the true value of the Houſes or Land aliend to the uſe of the States, towards the charge of ſome expenſive Works, as building of the Church or *Stadt-Houſe, &c.* Which kinde of payments upon Alienations, or Tranſports of Eſtates of that nature, are with them by a more active and nimble turning of their wits and money, to all kinde of Trade and Commerce, then other Nations are accuſtomed to do; ſo often and frequent, as the City of *Leiden*, which is more remote from Trade, then other Maritime Cities of *Holland*, lies under a Character or common ſaying or belief, *That once almoſt in every three years, the half of that City is aliened and ſold.*

Which way or courſe of payments, and rates upon Alienations, beſides the Fees to the Notaries, Secretaries, and *Greffiers*, for preparing,

preparing, writing, and authenticating the Deeds and Inſtruments (which coſts more then Two ſhillings Engliſh) cannot if the Houſe (which is not eaſie there to be found ſo cheap or ſmall ſized) ſhould be but Four ſhillings *per annum* rent or value, and at Twenty years purchaſe in a Country, where they are ſeldom at a lower purchaſing rate, but make the very charge or money to be paid for the Conveyance upon the Alienation, as to the Fortieth penny to be two ſhillings. And if the Eightieth penny ſhall be added no leſs then Three ſhillings ſterling; or if at Twelve years purchaſe, as to the Fortieth penny, will make one ſhilling two pence and ſomething more then a farthing. And when the Eightieth ſhall be paid, and ſeven pence more added for it, there will not be three pence left to defray the other charges of Mr. *Peters* Two ſhillings Conveyance, who doth neither in *England* nor Foreign parts, always it ſeems hit the mark; and may therefore do well, not to be over buſie in ſhooting in the dark, and ſo much at *Rovers*, where his education and preſent

Pro-

Profeſſion allows him no greater a light: For in *England* where upon Alienation of Lands and Houſes onely by Fine and Recovery, they do pay to the Supreme Magiſtrate a certain moderate rate proportioned according to their quantities and yearly value, the charge of a *Fine*, which with us is one of the higheſt and moſt chargeable kinde of Aſſurances, if the yearly value of the Houſes or Lands do not exceed Twenty pounds, goes not beyond Three or four pounds if it be acknowledged in Court, and Four or five pounds by Commiſſion; and the charge of a Feoffment, which is an antient, and a very ſafe and binding kind of Conveyance, though the Lands therein compriſed be of One hundred or One thouſand pounds *per annum*, or any greater value, is ſometimes not above Six ſhillings eight pence, with the Counterpart included; often not above Ten ſhillings, and very ſeldom, if the advice of a *Counſellor* or *Lawyer* be more eſpecially required in it, not beyond thirty or forty ſhillings.

And might have ſeen and conſidered be-

fore-

forehand, how unlucky it may be for him or any other to erect a confidence upon *Sandy* Foundations; or to undertake any further then his understanding or certain knowledge can bear him company; when as it is obvious to all that know those Countreys and people, that the manner or way of their making their Assurances for Land or Houses in *Holland*, must of necessity exceed the two shillings rate of his phansie; where besides the fortieth and eightieth penny which is due to be paid to the State, upon the sale of Houses or Land in *Amsterdam*, there cannot be a Demise or Lease made of a House without an eighth part to be yearly paid; a third part by the buyer or Tenant, and two thirds by the Landlord, to the Rulers of that City over and above the Rent reserved. And if there were not those payments to the State or Publick, the very Writings, Formalities, and Expences in their *Weiliken* or willing Sales, or their unwilling Sales, as upon *Skepen Kennesteus* which are like our Statute Merchants, or Staple, must needs go to a higher price then two shillings English: The overplus

 whereof,

whereof, if Mr. *Peters* ſhould be ordered to pay out of his own purſe, would in ſome competent time perſwade him to a greater deliberation, before he vented or flung out to the people his (if his Vindicator be not too bold with him) ſo groundleſs Relations, and to believe it to be impoſſible for him to ſtrain or diſtil thoſe far greater Fees and Charges into ſo ſmall a proportion, as that of his two ſhilling Conveyances; the ſeveral Forms whereof, and manner of proceedings therein briefly laid before the *Reader*, for the better manifeſtation of the truth which we do here aſſert, will not, we hope, be troubleſome unto him.

In a *Weiliken* ſale of Houſes in *Amſterdam*, it is uſual for the ſeller to put in two ſufficient Sureties, to make the Houſe to be of good ſale and poſſeſſion, and free it from all former engagements; and the buyer if he make not preſent payment of all the money, doth put in two ſufficient Sureties for the payment of what is agreed to be paid.

In order to which, the parties are to ap-

pear before a Notary and Witneſſes, and ſubmit to a Writing in this Form, *viz.*

Form of a Contract for the Sale of a houſe in Amſterdam *before a Publick Notary.*

Upon this preſent day the day *of* January, 1657. *before me* J. C. *by the Court of* Holland *admitted Publick Notary, dwelling in* Amſterdam, *and in the preſence of the Witneſſes hereafter named, perſonally appeared* A. B. *of the ſaid City who did and doth confeſs and acknowledge to have ſold, even as he ſelleth by theſe preſents unto* C. D. *alſo of* Amſterdam; *who alſo appearing, acknowledgeth to have bought of the ſaid* A. B. *a Houſe and the Ground wherein it ſtandeth, commonly called or known by the name of the ſign of*

ſcituate in *abutting*
upon *and adjoyning*
to *Neighbors for the*
ſum of
to be paid

And further upon ſuch other Conditions, Services, and Stipulations, as are mentioned in

in the old and former Deeds or Inſtruments of the ſaid Lands or Houſes.

And for further aſſurance of the buyer (if all the money be paid, which is there moſt commonly not until after ſome days of payment given, for which a Security is taken) is made the following or the like Act or Inſtrument in Parchment, with the Seals of the Judges or Sheriffs, commonly transfixed through the former old Conveyances, cancelled and adjoyned to them. *viz.*

Form of an Inſtrument or Act thereupon, before the Schepens or Sheriffs of Amſterdam.

WE *and Juſtices and Sheriffs of* Amſterdam, *do teſtifie and declare that* A. B. *appeared before us, and did acknowledge to have ſold, acquitted, and confirmed unto* C. D. *the Houſe, with the Appurtenances commonly called*
ſcituate, lying, and being in
adjoyning on the South ſide to the Houſe of
on the North ſide
to the Houſe of

And he the ſaid Appearer

declared for the ſame to be well and ſufficiently ſatisfied, and paid the firſt and laſt penny, in ſuch wiſe as that he therefore as principal, and E. F. *of*
and G. H. *of the ſaid* (who are to be Citizens, and have Houſes and Eſtate ſufficient in the ſaid City) *alſo appearing as Sureties both together, and each for the whole, did promiſe under Obligation, of all their Goods moveable and immoveable, preſent, and future, to free and cauſe to be freed and ſecured the ſaid Houſe and Ground in manner aforeſaid, for a year and a day* (which is there underſtood to be for ever and a day) *and alſo to take off or remove all old Letters or Engagements; and the ſaid* A. B. (the ſeller) *did alſo free and indemnifie his ſaid Sureties upon the like Obligation without fraud or Covin.*

In witneſs whereof, this Inſtrument is ſealed with our Seals in Amſterdam, *the Firſt day of* February, 1657.

Which Inſtrument Written in Parchment, is to be underneath ſigned by one of the

the *Secretaries* or *Town Clerks*, and each of the Sheriffs to put to their reſpective Seals upon Labels of Parchment, appending in Green-wax; for writing of which later Act or Inſtrument, the *Secretary* or *Town Clerk* hath Three Gilders, which is Six ſhillings of our money, which he takes for his diligence or expedition and for Salary, which is their allowed Fee as they there uſe, and take it Three Gilders more, which with the charge of the former and Introductory Act or Inſtrument made by the *Notary*, who being allowed Five ſhillings ſterling for going to ſee any Act ratified in the City, and Ten ſhillings if he go into the Suburbs or Adjacent places; takes beſides Three or four ſhillings ſterling, at leaſt, for writing of it, if it be but ſhort or ordinary, and one ſhilling ſterling for his Subſcription firm and knot, if it be brought ready written; and being not uſually *met een kleyn*, contented with a little, is left to *diſcretion* to get as much as he can or thinks fitting, according to the largeneſs or ſhortneſs of Writings, beſides what is to be paid to the Sheriffs or Schepens for

their

their Seals. Which if it ſhould be no more then as it is in willing Sales or Outcry of who bids moſt for a Houſe, is for the ſmall Seal, if the Houſe be under the value of Six hundred Gilders, or our Threeſcore pounds four ſtivers, which is betwixt four pence half-penny, and five pence of our money, or eight ſtivers, if it exceed that value.

In which there will be as little found to ſupport Maſter *Peters Goeden koop* cheap rate or charge of Dutch Conveyanes, as in that which is ſometimes uſed amongſt them of Houſes by an Outcry in the preſence of the Lord Chief Juſtice and Sheriffs, where the Conditions are publickly read and he that bids moſt, being preſently to put in ſecurity for payment of the ſum of money for which he ſhall contract for. There is beſides the Fortieth penny, and the Eightieth penny alſo, if it be in *Amſterdam*, and the charges of the ſmall Seals to be paid to the *Secretary* for making the Acts Three Gilders, which is about Six ſhillings of our ſterling money, and for Salary Three Gilders,

ders, and alſo Four ſtivers for each hundred the Sale amounts unto, alſo to the Cryer who with the Baſon and Hammer knocks it off, ſixteen ſtivers, to each of the Sheriffs there preſent two ſtivers and a half for each Houſe, there being ſometimes twenty or thirty in that manner ſold in an evening, beſides the *Pluckgelt*, which is a certain ſum, but no great one, to be drawn out of the price or rate by him who bids moſt, to animate and encourage the buyers and raiſe the price of the Houſe. And the *Rantſoem Gelt*, which though incertainly ſet, amounteth generally to above a quarter *per cent.*

Nor will that of an unwilling Sale, or an extent upon a *Skepen Kenniſten* or Bond, which like our *Statute Staple* or *Merchant*, hath *Executionem paratam*, a willing (as they there call it) condemnation or execution inſerted, be drawn or twiſted within the narrow compaſs of Mr. *Peters* two ſhillings Conveyance.

For in the ſolemnities thereof, after Bills for the Sale of ſuch a Houſe upon that kind of Execution poſted up *Ad valvas Eccleſiarum*;

ſiarum; which there as well as in other places, is accompted to be none of the ſmaller ſort of diſgraces and infamy; the Bill of Sale carrying this Form, *viz.*

Form of a Bill of Sale of a Houſe extended, and to be ſold upon a Skepen Kenniſten.

ANno 1657. *the Twentieth day of* January, *The Lord* (naming the Chief Juſtice) *and the Lords of the Bench of Juſtice, by vertue of a Schatbrieff or Executorials of a Sentence obtained by* N. N. *upon a Skepen Kenneſten, amounting to the ſum of* which O. O. *is indebted to him, do ſell a Houſe and Ground, ſcituate and ſtanding in* adjoyning unto the Houſe *of* on the South-ſide *reaching from the ſtreet to* behinde, *in ſuch kinde and manner as the ſaid Houſe and Ground, is now ſtanding, ſcituate, and being in the place aforeſaid, with its Building and Adherences, Free-houſe and Ground, for the ſum of Four hundred Gilders, to be paid upon uſual Houſe daye, that is to ſay, In three payments; the firſt upon*

upon the firſt day of May *next enſuing the date hereof; the ſecond parcel upon the firſt day of* November *next enſuing; and the reſidue upon the firſt day of* May, *which ſhall be in the year of our Lord God,* 1658. *Provided that the ſaid* O. O. *may keep the ſaid moneys upon intereſt from the firſt day of* May *next enſuing the date hereof, for a year at the rate of the Eighteenth penny for intereſt, provided always, that he declare the ſame before the ſaid firſt day of* May *next enſuing, in the Secretaries office of this City of* Amſterdam, *and pay the charges of the Execution in ready money. And furthermore putting in two ſufficient ſecurities for ſatisfaction or payment of this Bargain.*

Which beſides the charges of the Writings and Inſtruments, incident and neceſſary thereunto, will be found to be little leſs then for *Rantſoem gelt* five gilders, which is ten ſhillings Engliſh, *Pluckgelt* ſeventeen ſtivers, which is about one ſhilling ſeven pence half penny; to each Lord preſent two ſtivers and a half, to the Cryer ſixteen ſtivers, and to the Secretary or

Greffier for Salary, three gilders and sixteen ſtivers, which is about ſeven ſhillings and ſeven pence Engliſh money. And the Houſe being thus bought in Execution, a further aſſurance is alſo made in the form following.

Form of further Aſſurance of a Houſe ſold in Execution.

WE A. B. *and* C. D. *Sheriffs in* Amſterdam, *do teſtifie and make known, that there appeared before us the Lords, Burgo-maſters, and Governors of this City, and did acknowledge to have ſold upon the* day *of* January, Anno 1657. *by Execution of the ſaid City unto* O. O. *an Houſe and its Ground, ſtanding in bordering on the North-ſide and on the South-ſide upon extending from before in the ſtreet and behinde, unto the Houſe of in the ſame kinde and manner as the ſaid Houſe and Ground are now there ſcituate, bordering, and built, having belonged unto Free-houſe and Ground for the ſum of gilders which the ſaid* O. O. *hath brought in, and paid, and*

and are again (as far as the ſame could extend) converted and applied for the payment of the Debts and Engagements wherewith the ſaid Houſe and Ground, or the ſaid N. N. *were engaged or burdened, appearing by the Regiſter of the Aſſignations* (naming thoſe who are aſſigned to have right and payment out of it) *which is thereof kept. And in regard of the Sureties which are put in upon the Receipt of the money, the ſaid Burgo-maſters in behalf of the ſaid City, have promiſed to free, and cauſe to be aſſured the ſaid Houſe and Ground for one year and a day* (which is there underſtood to be for ever) *as in ſuch caſes is uſual, and to take off or remove all old Letters and Engagements without fraud or covin.*

In witneſs whereof theſe Letters are ſealed with our Seals the day of Anno Domini 1657.

The writing whereof beſides the charge of the Seals, if the fortieth and eightieth penny be not paid, is not likely to coſt leſs then ſix ſhillings ſterling, and the buyer

in case of troubles or after-demands, is to return to the Burgo-masters, who are to indemnifie him, and help themselves as well as they can, by recovering in value, upon, or of the Receivers of the moneys and their Sureties.

Which troublesome way of securities which are there to lie long, and almost perpetually at stake. Our Laws of *England* do prevent by leaving the Plaintiffs, or Pursewants of, or in the Extent (after that the Sheriffs, who are Ministerial Officers of Justice, have delivered unto them the Possession of the Houses or Lands extended) to be sued or prosecuted by any who have better title; and makes the Office of Sheriffs with us, not to be so much perplexed, or in a continual Warranty, hazard and fear, as those of the Dutch must of necessity be, who are therefore more inforced to keep *Registers* of such their assignations and payments of Debts, and to take securities for indempnifying them, then ours are in *England*.

Neither will Mr. *Peters* make out his Assertion of the cheapness of the *Holland-*

ish

iſh Conveyances, if it ſhould paſs by a kinde or manner of Decree or *Decret* (but ſometimes) uſed in *Amſterdam*, and ſome other places or Provinces of that Nation (whoſe Cities and *Stadts* have to the ſadly experimented, and complained of deſtruction and diſturbance of Trade and Affairs, too many different and ſeveral Cuſtoms and By-laws) where if either or both of the parties do make any difficulty of the goodneſs or ſufficiency of the Title, and the Seller cannot or will not put in ſufficient Securitie, he may then if the buyer pleaſe, obtain to do it by a Decreet or Decree from the Court of *Holland*; to which, the party ſelling, makes his Addreſs by Petition: Where upon the Caſe demonſtrated (the Court makes a Decree, which is by a Purſevant, after ſeveral times upon ſeveral days ringing of the Town-Bell, where the Houſe and Ground is ſcituate, publiſhed, and read of at the *Stadt* or Town-houſe of that place, to the end, that any one who hath or can make pretence or title to the ſaid Houſe or Ground, or hath any engagement

gagement thereupon, may within a certain and ſhort time limitted, make their addreſſes; which, if no body appear, and it being clear returned by the Purſevant, the Court of *Holland* (no obſtacle or engagement appearing) doth aſſure the ſaid Houſe and Ground from the Seller to the Buyer, each party paying half of the charges of the Decree, being in the whole about ſixty gilders, or ſix pounds ſterling, beſides the fortieth and eightieth penny, which is there always to be paid.

So as every way, and in all the before-mentioned ſeveral kindes or manner of Conveyances and Aſſurances in *Holland*, and the United *Belgick* Provinces, Mr. *Peters* cheap accompt or reckoning for the charges thereof, is like, if nothing were at all to be paid to the State, to meet with no reality or performance of his undertaking as to the onely expences and coſts of Writings.

The *Formula's* or uſual and common Forms whereof are not ſo ſhort or comprehenſive, as to merit ſmall or little recompences or ſatisfactions; nor are the other

other kinde of Writings or Inſtruments in that Countrey, either ſo Conciſe or *Laconick*, as to be diſpatched at any eaſie rate by the *Notaries* or *Writers* thereof, who laboring to prevent the many cavilling and unſubſtantial Exceptions which are there uſually by allowance of their Laws or Cuſtoms, oppoſed or brought againſt them, do make them, eſpecially their *Procurations* or Letters of Attorney, very much to exceed in length, the more ſhort and ſufficient way or forms of an Engliſh Letter of Attorney or Procuration to proſecute or ſue for a debt or ſum of money, which is no longer or extenſive then in this manner, *viz.*

Form of an Engliſh Procuration or Letter of Attorney.

KNow all Men by theſe preſents, that I. A. B. *of* C. *in the County of* D. *Eſquire, have made and conſtituted, and in my place put, and by theſe preſents do make conſtitute, and in my place put my beloved Friend* F. G. *of* H. *in the County of* N. *Gentleman, my true and lawful Attorney for me, and in my name, and to my uſe, to demand, and receive of* J. K. *of* L. *in the County,*

County of M. *Knight, the ſum of One hundred pounds due, and payable to me for Rent, at the Feaſt of St.* Michael *the Arch-angel laſt paſt; and for non payment thereof, to diſtrain, proſecute, ſue for, recover, and give acquittances and diſcharges for the ſame; and to do every thing therein, and to ſubſtitute one or more Attorneys in the proſecution of the premiſſes, as if I my ſelf were perſonally preſent, ratifying and confirming hereby whatſoever the ſaid* F. G. *ſhall do or cauſe to be done therein. In witneſs whereof I have hereunto put my Hand and Seal the Firſt day of* January, *in the year of our Lord God One thouſand ſix hundred fifty and ſeven.*

Which will not be ſo large or *overgrown*, as thoſe which are made in *Holland* in the more then needs to be repeated, and *Tautological* manner following, *viz.*

Form of a Dutch Letter of Attorney or Procuration.

KNow all men by theſe preſents, That on the Tenth day of the Moneth of June, *in the Year of our Lord One thouſand ſix hundred fifty and ſeven, before me* J. N. *Notary*

Notary and Publick Tabellion, dwelling in this City of Amſterdam, *lawfully admitted and ſworn, and in the preſence of the Witneſſes hereafter named, perſonally appeared* A. B. *of*

and of his own freewil hathmade, ordained, and in his ſtead, authoriſed, and doth expreſly make, ordain, conſtitute, and authoriſe by theſe preſents, Coeſvelt, D. Wiis, Achtevelt, D. With, Vander Horſt, Vander Meii, Sompeeck, *Procurators before the honorable Court of* Utrecht; *and* Zuiilen, Cuiilenborch, Lamſweerde, Back, Van Beeck, *Toll Procurators before the honorable Tribunal of* Utrecht; *and* Bambrug, Lemven, Roeck, Terſtall, D. With, *Pawn-takers or Executors of the Court aforeſaid*; *and* Schoonderroort, Weſtbroeck, *and* Wees, *Door-keepers or Executors of the Tribunal aforeſaid*; *and* John Groen, Gysbert Lada, Witgens, *Meſſengers of the City aforeſaid*; *and* Hyſelendoren, Rodere, Vande Velde, Raveſtine, Deiin, Roſeboom, Hoogborch, Vos, Vinch, Colen, Sterrevelt, Vandergoes, Groeninghe, Villiers, Copmoyer, *Procurators before the*

Provincial and High Court in Holland; *and* N. Vanderhoop, Francois Merchaut, *Procurators at* Amſterdam; *and* M. Van Zuil, Wagensfelt, Gommelraet, Maes Viitenbroeck, Tiboon, Trooſt, *Procurators at* Rotterdam; *and* N. Coes, Engell Dibbits, *Procurators at* Arnheim; *and* N. Altma, Vogel Sangh, *Procurators at* Eiel, *and* N. Van Eck, *Advocate there*; *and* Muiis, Gelder, Keyſer, *Procurator at* Swoll; *and* N. Muiis, Deyager, *Procurators at* Dort; *and* Roger Camerbeeck, *Procurator at* Amersford, *and* Abraham Egberts, *Citizen or inhabitant there*; *and likewiſe, eſpecially the Worſhipful* Mr. C. D. *Advocate before the ſaid Court at* Utrecht, *all joyntly, and each of them particularly, and one for all* in omnibus ad lites, in communi forma; *and eſpecially for to convene and ſummon at Law* K. L. *and his ſeveral goods in all places where he the ſaid* K. L. *and his ſeveral goods may be found, and eſpecially alſo to arreſt and detain the perſon of the ſaid* K. L. *his Attorney and Attorneys, Intervenient and Intervenients, Aſſiſter, Aſſiſters, and Aſſiſtants, and their reſpective goods, and to*

do

do all things which may any way tend to the ſecuring and taking into cuſtody the ſaid K. L. *and alſo his reſpective goods: To cauſe the ſaid* K. L. *to put in bail without departing, and to bring and cauſe him to be brought into ſtricter cuſtody and impriſonment, there to put, or cauſe him to be put on his own, or the leaſt expences, as is uſual at the place where the ſame ſhall happen; likewiſe to keep him at the leaſt charge or otherwiſe, and to diſcharge him again* cum expenſis, *or otherwiſe; and likewiſe, having the ſaid* K. L. *and his ſeveral goods in arreſt, detention, apprehenſion, or impriſonment, there to recommend, and cauſe to be brought into ſuch ſtricter cuſtody or impriſonment as is aforeſaid, all Securities put in as well* pro judicato, *as for the arreſt, arreſts, detentions, ſeiſures, and apprehenſions, to be done and already done, to debate of inſufficiency, or to accept the ſame or others, and to proſecute the ſaid Suits to the utmoſt in all the ſaid inſtances: To produce witneſſes, to reproach the Productions of the ſaid* K. L. *by all means, though the infamy or honor of the witneſſes might be thereby revealed, to re-*

ſcribe, to conclude in Law to chuſe domicille, *to require ſecurity* pro judicato *of all inſtance or inſtances alſo, particularly thoſe ariſen by arreſt, detention, corporal apprehenſion, impriſonment, ſeiſure, and execution, or otherwiſe to renounce* cum expenſis, *and to take them up a new, to appeal and reviſe, to proſecute the ſaid appeal and reviſion, as well as in the firſt inſtance, to obtain the execution of all the ſaid inſtances, and of obtained proviſions of Juſtice, as alſo of Depoſito's: To contradict thoſe of the ſaid* K. L. *to the end of all the utmoſt deciſions, in all the ſaid inſtances, to obſerve all comparitions, alſo in all interlocutory and definitive ſentences, or without the ſame, in whatſoever cauſes and inſtances the ſame may be: To purge, putting by of all terms, as alſo of the Intendit or Intendits, and all other defaults occurring in all Cauſes, and ariſing Incidencies* cum expenſis, *and with refuſal of coſts: To require relief as well incidental as ſubſtantial in all the ſaid inſtances, and ariſing incidencies, and where need ſhall require in the ſoul of the appearer, to make the oath of not calumniating; and alſo all further*

ther Proffers, Delations, and Relations of deciſory, peremptory and judicial oaths, alſo to accept the delays of oaths, and that in all the ſaid inſtances as well on all incidencies, as in the principal cauſes undertaken againſt the ſaid K. L. *to his Poſitions and Articles of all the Poſſeſſors of his Goods, and to Writings and Interrogatories to anſwer in perſon: To give an act of non-prejudice unto thoſe who are to be heard upon the Interrogatories in the ſaid Cauſes and Incidencies: To make proffer or proffers as well out as in the Suits; and the proffer or proffers made in, or without the ſaid Suits, as well by the ſaid* K. L. *as the Poſſeſſors of his Goods, to accept and further generally to do all other matters and acts againſt the ſaid* K. L. *and all others as can any ways be done by vertue hereof.*

And further alſo, according to the Laws and Cuſtoms of the places where the ſame may happen to befal, and which the appearer might or could do, if himſelf were preſent, although that the ſaid Matter or Proceſſes, or the Incidents of the ſame, required more ſpecial or particular Power or Procuration then is aforeſaid: The Conſtituant giving alſo

ſpecial

ſpecial authority and power at all times, as well before as after the Conteſtation of Law, and in all inſtances and ariſing incidencies there occurring; and alſo for all the expreſſed and all other ſpecial acts, requiring ſpecial or more ſpecial Procuration in their ſtead or ſteads, one or more others with like or limited power to ſubſtitute them to revoke, and to ſubſtitute others; The appearer giving moreover eſpecially, and onely unto the ſaid Advocate C. D. *(with ſecluſion of all the other Conſtitutees and their Subſtitutes here above mentioned) full and ſpecial power* ad negotia, *as alſo eſpecially in the ſaid proceſſes or cauſes, and eſpecially alſo againſt the ſaid* K. L. *as well in the firſt, ſecond, third, as other inſtances, and the incidencies of the ſame there ariſing, alſo at all times to revoke all and every one of the ſaid Conſtitutees, and to caſhier them and their ſubſtitutes; and alſo thoſe who would buſie themſelves, or intermeddle in the Cauſes or Proceſſes by vertue hereof, eſpecially if it be done by the ſaid Conſtitutees or any of them without the order and direction of the ſaid* C. D. *And alſo by vertue hereof*

for

for the ſaid Cauſes and Proceſſes, and all the ariſing Incidencies of the ſame, eſpecially intended or yet to be intended againſt the ſaid K. L. in manner as is aforeſaid as well ad lites, as alſo ad negotia, and for all the aforeſaid ſpecial (and other) acts requiring more ſpecial power at all times to ſubſtitute and to revoke them again, and to do all things which he thinketh may ſerve for the furtherance of the matters aforeſaid, and which he Appearer himſelf might or could do being preſent, be the Appearer willing that thoſe of the ſaid Conſtitutees ſhall chiefly ſerve in the Cauſes, who the ſaid C. D. ſhall pleaſe to require, and to employ thereunto. who ſhall alſo at all times remain ſubject to the revocation of the ſaid C. D. the Appearer promiſing to hold and obſerve for good firm and infringible, all that by vertue hereof ſhall be done and acted by the ſaid Conſtitutees each one of them in particular and one for all, and their Subſtitute or Subſtitutes, and eſpecially by the ſaid C. D. his Subſtitute or Subſtitutes; and alſo to hold all of them free of coſts and damages, for what may directly or indirectly befal any of them, either their reſpective goods or perſons, by whom or in what manner ſoever the ſame may happen, all under obligation as according to Law; In witneſs

whereof

whereof the ſaid Appearer hath ſigned and ſubſcribed theſe preſents. Thus done and paſſed in this City of Amſterdam *in the preſence of*

Witneſſes hereunto required.

Which is here inſerted to ſhew, that beſides the extraordinary and needleſs length thereof, there are ordinarily in their Laws and Proceedings, more Traverſes and ſeveral kindes of Agitations, then what Mr. *Peters* Champion or Vindicator enumerates in our Laws, *viz.* Writs, Warrants, Arreſts, Judgments, Executions, Extents, Exigents, *Reſtringas* (when he ſhould have ſaid *Diſtringas*) *Fieri facias* and *Capias Utlegatum* (inſtead of *Utlagatum*) which if he had but underſtood ſo well as to have given them their right names or terms, might have appeared to have been but as ſo many dependencies and neceſſaries in every Suit or Action before Judgment, and the concluſion and putting the Judgment in execution, and ſo little vexatious, as no Suit which doth not arrive at a Peace or Agreement in the beginning or

Arguments for the Jews *admiſſion into* England, *and Vindication of Mr.* Peters *by* D.L. 87.

or mid-way of the Action can poſſibly want, or be without them, unleſs this *Railer* at our Laws, before he underſtands them, can tell how to go to Law and recover a debt, without a Writ, Proces, or Warrant to bring the Defendant to Judgment, or ſo to foreſee beforehand or hinder all intervenient accidents (which the ſons of men could never yet attain unto) which may happen to the Plaintiff, or the Officers of Juſtice, who are to make and execute them or prevent all the Subterfuges or Evaſions which Defendants do naturally and uſually make uſe of to preſerve and defend themſelves, as there can be no expiring of the Retorns of Writs or Proces, nor any occaſion to renew them; or can ſhew the World a way how a Judgment or Sentence can be efficacious if the Defendant ſubmit not to a preſent payment (which is but ſeldom) without Writs or Proces of Execution to inforce them.

Or that Mr. *Peters* can inform him, that in the proceedings at Law in *Holland*, a Judgment or Sentence can be juſtly given

without calling or citing the Defendant, or forcing him to appear; if he shall refuse it, that the Judges there are so *Lynceans*, quick-sighted or penetrators into the hearts and intentions of the Plaintiffs and Defendants, as there can be no need of Allegations or Demands of Plaintiffs, Negations, Pleas, or Defences of Defendants, or the Matters and Controversies to be decided, so transparent, as there can be no need of the help or assistance, observation and conduct, of those no less antient then experimented, wholesome, and safe Rules and Pathes which tend unto the search and disquisition of suggestions and pretences, and lead unto the finding out of truths, and a right distribution of Justice which the *English*, *French*, *Spanish*, *Italian*, *Germans*, and all other Nations which have but the wit of wearing Clothes, and hiding their nakedness, are as well as the Dutch and Men of *Holland* inforced to make use of.

Nor will he be ever able to prove that the Dutch are so kinde and soft hearted one to another in their Law, charges and

pro-

proceedings, as to make the payment for their labor ſmall, or to be any thing prodigal of it in a Countrey, where beſides the Impoſt *Van de Huyſen* of their Houſes, which is an eight part of the yearly Rent, they do yearly pay the ſixth part of the yearly value of the Lands which they let or Leaſe to one another, with a certain rate or monethly pay for all that is ſowed or planted therein; their *Sout-Gelt*, or *Gabel* for Salt, to be ſold to every Family at the States rate, much after the manner of the French Impoſition or State Artifice, for ſo much as ſhall be conceived they may ſpend yearly in their Houſes, and their Exciſe upon Cloth, Bread, Beer, Fleſh, Wood, Turff, Turnips, Carrets, and all that ſerves for the proviſion of Livelihood, Clothes, and Dyet, (Candles, Apples, Nuts, Pears, Grapes, Books, Coaches, Waggons, and Servants wages not eſcaping it) where they ſell the Dung and Excrements of Men and Beaſts; ſave and make money of the Urine of themſelves and Cattel. And the prizes of all things are ſo racked and inhanſed, as Money, and

Commerce is by a neceſſity of War and Miſery, made to be the daily deſign of the generality of that induſtrious people.

And if they did not as they do ranſack and ſearch Seas and Lands, and all the corners of the Earth to have wherewithal to bear it, but ſhould live onely as we and other people do by their Inland Manufacture, Trades, and Commodities, Profit, and Revenue of Lands, with a moderate Trade into forein parts, and more upon their labor, and leſs upon a crafty merchandiſing, ingroſſing, and deceits of Trade, would in forty or fifty years ſpace, or leſs then half an Age, have been conſtrained to have ſold their Cities, Lands, Houſes, Ships, Moveables and Immoveables, yea, themſelves, Wives and Children, to have for that time but kept them in a poor and daily wanting condition, under ſuch inſupportable burthens and payments.

Where they pay for the *Exciſe* or *Impoſt Van beſegelde brieven* two ſtivers which is almoſt two pence half penny Engliſh, for the

the leſſer or ſmall Seal of the States, and four ſtivers for the great (which are diverſly made uſe of and paid for, according to the value or concernment of the matters contained therein) for every leaf of Paper to which the Seal is to be affixed (project which Mr. *Peters* in his Book, which he was pleaſed to call *Good work for a Magiſtrate*, had an intention or deſign to beſtow upon *England*) of laſt Will and Teſtaments, Petitions, Contracts, Bonds, Bills, and all manner of other Deeds, and Aſſurances to be uſed or exhibited in their Courts of Juſtice.

(p) Pauli Merulæ *diatrib. de Statu. confœderatarum Provinciarum* Belg. 120.

All or any of which if not written upon the States, Paper marked with their Seal (which the Neighborhood of the King of *Spains* Provinces and exactions hath taught them) are not otherwiſe to be allowed or valid in any of their Courts of Juſtice, Aſſemblies or Tribunals, the profit whereof as to what concerns the Acts and Orders of Court and Petitions exhibited therein; or the like Judicial proceedings or Proces are, beſides an yearly ſalary allowed to the Preſident or Lord Chief Juſtice

ſtice of the Court, who keeps a Sea, & hath the profit of it for his better ſupport; the twelve other Judges having alſo their yearly ſalaries; two of which do weekly ſit by turns in an outer room or chamber, to hear & determine Cauſes the reſt ſitting with the preſident in an inner Room or Chamber, where matters of difficulty are brought to them for advice or deliberation from the outer

In which Courts, upon every ordinary motion or requeſt made by a Proctor or Petition delivered, four or ſix ſtivers are paid, beſides *De impoſt van ought fondeerde Proceſſen vectigal temere litigantium* a tax or rate upon proces and Proceedings in Law to be paid (like the Fines which were formerly paid in *England* in the Court of *Upper Bench* upon the Plaintiffs putting in his Declaration, but were not to be paid, unleſs the ſum in demand or complaint exceeded forty pounds ſterling) to be in every Action depoſited and paid by the Plaintif, if he did not make good his Actions, where though ſome of their Fees are not ſo tall or big as others, or as they are in other Countries, having been long ago

ago limited and rated in the time and Government of *Charles* the Fifth Emperor: Yet the multiplicity of buſineſs in their ſeveral Courts, where the Proctors who give Four or five hundred pounds ſterling for their places, to be admitted into a ſet or certain number, as four or eight in ſome Cities and Places, or not very many where they do exceed that number, frequent ſitting of their Courts; which unleſs about a week before and after the ſolemn Feaſts of *Chriſtmas*, *Eaſter*, and *Pentecoſt*, all the *Canicular* or Dog-days, *Kermis* or *Fairs*, have no Vacancies *Feriæ*, or Intermiſſions, but do ſit every day in the week and year, except Saturdays and Sundays, the Courts of Appeal, and High Court onely excepted, where they forbear to ſit upon Mondays as well as upon Saturdayes; often prefixions of dayes, and terms, frequent comparitions, and every act or ordinary thing to be done by Petitions or Solemn Acts in their Courts. As a Petition to the Judges, and an Order thereupon to a Serjeant, or *Doorwarder*, to make a Summons, Citation,

or

or an Arreſt (which in *England* are done of courſe by ſworn and intruſted Officers, without trouble of the Courts or Judges) which expends much of the time of the Judges, as well as the money and time of the Clients; and makes a large amends for the ſmall allowance of ſome (for all are not ſo clipped) of the Advocates and Proctors Fees.

Who can take a liberty to reckon for more then they ſhould; and for every little thing which they do, or in parts, or by another name, for what ſhould be included in the whole, or where, as in many Caſes ſome of their Fees and Allowances are left to diſcretion, do by that and other Excurſions and Sallies out upon the Client, which the narrowneſs of ſome of their Fees do occaſion, give themſelves ſuch a ſatisfaction, as they will be ſure to be well enough paid for what they do, and to grow rich by their Profeſſion.

Inſomuch, as a well practiſed *Proctor* can get there by his practiſe, One thouſand pound ſterling *per annum*, a *Secretary* or *Greffier* Four or five hundred pound ſterling

ſterling *per annum*, beſides what the State partakes with him; and ſome of their *Advocates* do leave eſtates behinde them of their own getting of four, five, or ſix *Tuns* of Gold, every of thoſe Tuns, according to the accompt of thoſe Countreys, amounting to Ten thouſand pounds ſterling.

And although the Fee of an *Advocate* or *Lawyer*, be in many of the *United Provinces*, for an Advice by word of mouth, and very little and often conſultation or peruſing any ſmall Acts of Court, Papers or Letters; and every little ſtirring or agitation in the cauſe, but one Gulder and twelve ſtivers, which is about three ſhillings three pence of our money: Yet he takes for advice in *Scriptis*, or under his hand (which is commonly or very often) being at diſcretion, never leſs then five *Gulderen*, or our ten ſhillings, and as much over and above as the Client will give, or he can get: And *Voor de Pleydoye* or Plea (not ſuch as our Engliſh Lawyers ſtudied Arguments) but interlocutory Demands or Requeſts, Anſwers, Replies, Duplies, or

Advocates Fees.

Explanations by word of mouth of ſome Writings brought or put into the *Sack* or Bag, Twenty four *Stuyvers*. And do take alſo for every page of Writing, containing fourteen lines, which have ſometimes but three or four words in each of them, twelve ſtivers, or our thirteen pence, (which is more then any Fees taken in *England per* ſheet) the Advocates there uſually doing many things in writing which our Lawyers in *England* are not uſed to do, as making a *Calendrier* or *Breviate* of the Cauſe or Writings, when they ſhall be taken out of the *Sacks* or Bags in the end or concluſion of the Cauſe. And beſides their clapping into their *Regiſters* or Accompt Books, which they do there keep to reckon to their Clients, as many and as often Fees or Cravings as they can poſſibly imagine how to reckon, cannot forbear to demand for interlinings which ſhall happen to be in their Writings, and to ſet down for Vacancies and Salary; and for every thing *extra locum* (*i. e.*) out of the Court or his Houſe (where he is hard enough for his Client, and the Regulation Fees) three *Gulders*,

Gulders, ſome of them claiming an allowance as a juſtifiable Fee of nine *Gulders per diem*, which is eighteen ſhillings *Engliſh* money for all the days and buſineſs which they attend, from or out of their places of Reſidence (which is there very often where every *Stadt*, City, or great Town; and many *Dorpes*, and ſmall Villages are not without their Courts or Law-days, and ſeveral Laws and Cuſtoms) though nothing be done in thoſe days, (Sundays, Feſtivals, and Vacations not excepted) and ſix *Gulders* in their Courts or places of abode, for every four hours buſineſs or attendance. And many of them as well as thoſe in the Neighbor *Spaniſh* Provinces, are ſo careful of themſelves, and their expence of time, as they will not omit to reckon for every Vacancy, as they call it, conferring, or talking a little with the Client or adverſe party in the Court, or in their Houſes or the Streets, neglect of other cauſes, or for pains extraordinary, ſpeaking to any about their Clients buſineſs, or to have commended the cauſe or its expedition; as alſo for all

other diligences, interpellations, or loſs of time, as well in Term as Vacation; and ſomething for every day, and often appointed days and terms when they attend the Court about other buſineſs, though that cauſe be not called upon, nor any thing done in it; or for looking upon a Roll, and two ſhillings four pence Engliſh for writing but a Letter of an ordinary length to the Client, or more if it ſhall exceed; and three ſhillings four pence, or one Gulder and twelve ſtivers for a little ſpeaking, or time ſpent with the Proctor, calling at his Houſe, or the like.

For making a quotation to a Reply three ſhillings Engliſh.

For five larger leaves of a Reply ſix ſhillings ſterling.

For quoting every leaf three ſtivers, which is above our three pence.

For ſending a note of directions to a Proctor two *Gulderen*, or four ſhillings ſterling.

For making a Requeſt with oppoſition, one Gulder two ſtivers.

For a Reply of large three leaves (their pages,

pages, or one ſide of a leaf, being there termed and reckoned a leaf) two Gulders two ſtivers.

For a Demand, being at large half a ſheet, ſix ſtivers.

For peruſing a deduction of Coſts, one Gulder twelve ſtivers.

For hearing a Sentence pronounced, containing condemnation, for the principal, or by proviſion, or interlocutory (which our Lawyers are not allowed) upon Proceſs put down in writing, nine ſtivers.

And the *Greffiers* or *Prothonotaries* do take for ordinary Acts, which are very ſhort; and like the Rules and Orders of Court in the Courts of *Common Pleas* and *Upper Bench* in *England* Three ſtivers, which is above our three pence half-penny farthing. *Greffiers or Prothonotaries.*

For an Extract or Copy of an Act, two ſtivers.

For Acts of Diſpoſitions, eight ſtivers.

For Proviſion of Appointment, twelve ſtivers.

For Judgments interlocutory, ſixteen ſtivers.

For

For expedying of a Mandement or Command of the Court, eight ſtivers.

For every page of copying (after their manner of few words in a line, leaſt they ſhould ſmother or infect one another) containing twenty eight lines, fifteen ſtivers, which is about our eighteen pence; and more then our eight pence *per* ſheet for Copies in the *Chancery* of *England*.

For Final Judgments, in every ſum above Five hundred Gulders, or Fifty pounds Engliſh money, Ten ſhillings or five Gulders.

For a Judgment in ſmall Caſes, three Gulders or ſix ſhillings Engliſh.

For *Namptiſſement*, or Bail, or depoſited monies, which are brought into Court, the ſixtieth penny (which is more by half then our two pence in the pound, for moneys brought in and delivered out of our *Chancery*, where there is no ſuch rate neither paid if Recogniſances be onely given.

Secretaries or Writers Fees.

And the Four Secretaries or other Writers in the Court, do take no leſs for the expedition of an Appointment upon a Petition,

Petition, or any other common Mandement, then ſix ſtivers.

For other Mandements and Proviſions of Juſtice, twelve ſtivers, which is about our thirteen pence.

For an Act called Benefit of Inventory, two *Gulderen* ten ſtivers.

And for Regiſtring a Commiſſion five ſhillings Engliſh.

And the *Notaries Fees* or *Takings* are ſo far from cheapneſs, as they will not be ſatisfied for compoſing an Oath *De non Calumniando*, (in which they are eaſed with a *Form* or *Precedents*) being not two ſides, and for writing a Letter, and a little time ſpent, with leſs then five ſhillings Engliſh, do take for every ſide or page, of a ſhort & ſmall paper looſe and ſcatteredly written, ſix pence Engliſh, & twenty ſhillings Engliſh *per diem*, when employed out of their Houſes; and for any conſiderable part of the day ten ſhillings, though they be in every City or great Town; but a certain number which might perſwade them to a cheaper rate, do reckon 5 ſhillings Engliſh for every Act; if but to ſee an Authenticati-

on,

on or Subſcription of a Procuration, or the like, if but done in the next ſtreet, or out of their Houſes or Offices; and as much more if they go but into the *Fauxburgs* or Suburbs, out of the Town or City; and muſt be paid alſo, if they do not write for time ſpent in their Houſes or Offices, in talking or adviſing about the Clients buſineſs; and for attending a Commiſſion to examine no more then two witneſſes upon a few Articles or Interrogatories, examining, compoſing, rectifying, correcting, copying, and ingroſſing (being but an Enumeration of all the incident and minute particular parts of the buſineſs, onely to raiſe and make a kinde of merit of more Fees) of Depoſitions which were but ſmall, and under forty ſides of Paper thinly or wide written, twenty pounds ſterling, beſides three pound twelve ſhillings Engliſh to the Town Secretary or Examiner.

And though the Procureurs or Proctors who do there act and officiate for their Clients as our Attorneys do in *England*, were not long ago limited to ſixteen ſtivers for

for their Fee for an Advice, and did take but eight ſtivers for a Retaining Fee which they reckon for every Court day or Compariſion.

Yet they can tell how to make it up, as we ſay in *England*, *In the Shire for what is loſt in the Hundred*, and pay themſelves for their labor and pains, every thing which they ſhall do before they finiſh their reckonings, which they do enlarge and ſtretch in this manner, *viz.*

	Gul.	Stib.	Penn.	
For furthering the Suit	0	6	0	*Proctors or Procurators Fees.*
Furthering of an Anſwer, and bringing it in	0	6	0	
Getting Papers to Renounce	0	3	0	
Viewing of the Anſwer, and reſuming the Calender	0	8	0	
The ſubſcribing or underwriting of a Seal for a Certificate	0	1	0	
A Retaining Fee	0	8	0	
Diligence in peruſing of Papers for Reproach	0	16	0	
Hearing a Plea pronounced	0	3	0	
Furniſhing of Papers	0	3	0	

	G.	Sl.	P.
Bringing them together	0	1	0
Soliciting for a Sentence, and giving in many Bills	0	18	0
Hearing it pronounced	0	4	0
Causing it to be written, and taking forth the Sentence	0	14	8
Perusing of a Letter from the Client	0	1	8
Fetching Papers, and bringing the Client to the Judges	0	12	0
Thirty five extraordinary peremptory terms, with a small or not so much as a days attendance, all put together, the business therein being but Comparitions, Interlocutories, or the like, and would have been of course dispatched with us	10	10	0
Soliciting the Sentence or Exceptions	0	6	0
Hearing it pronounced	0	3	0
Writing a great Letter to the Advocate	1	4	0
Discoursing with a Burgomaster concerning the Cause,			

and

	G.	Sh.	P.
and reporting the ſucceſs to him that proſecuted the buſineſs	0	12	0
Diligence in peruſing the Declaration, and noting down Inſtructions for an anſwer	0	8	0
Acting with the Advocates from eleven of the clock until twelve	0	18	0
Writing the Execution wherein Prolongation was deſired and ſecurity	0	4	8
Attending him that followed the buſineſs from eight until ten, to conſider how to right to the Client	0	12	0
Peruſing a Letter	0	3	0
Writing two large Letters	1	4	0
Peruſing a Reply, and taking inſtructions for a Duply	0	8	0
Peruſing of Papers, and deliberating upon the Diſpoſition, and for vacancy from ſix of the clock until ten in attending to arreſt ſome goods	1	4	0

	G.	St.	P.
A retaining Fee about the arreſt	0	8	0
Quoting the Writings	0	4	0
Making of the *Index*	0	17	0
Aſſiſting and following a Conference and authentication	0	2	0
Beſpeaking or cauſing a Procuration to be written and taken forth	0	6	0
An Extract written out of an *Engliſh Almanack*	0	3	0
Conferring the Authentication and Seal	0	5	8
Fixing and ſigning of two Seals for the Procutations	0	3	0
Solliciting the Lords and Burgomaſters for a Sentence	0	8	0
Vacancy from nine of the clock until twelve	0	18	0
The like in full Court another day, and attending the whole forenoon	0	12	0
Speaking to the Committee when Commiſſioners were appointed	0	6	0

Attend-

	G.	St.	P.
Attending from one of the clock till four, and keeping appearance	0	18	0
Solliciting for a Report	0	3	0
Day-money (which is when the Proctor is employed *Extra locum*, or from his place of Reſidence, and hath more for Days-money if out of the *Province* his charges being borne)	3	0	0
For beſpeaking a Sentence	0	3	0
Copying it	0	3	0
Drawing the State of the Caſe	3	8	0
A retaining Fee about a Petition wherein the adverſary deſired time to renounce	0	8	0
Making and ingroſſing, the anſwer being ten ſides	2	0	0
Fitting a Plea	0	4	0
Solliciting the Diſcharge	0	3	0
Hearing it pronounced	0	3	0
One and thirty extraordinary terms, or ſhort days, and prefixions continued over	9	6	0

Nine

	G.	Sl.	P.
Nine Presentations and four Orders	0	13	0
Perusing of a Paper	0	8	0
Drawing a Petition upon Security, *De Judicio Sisti*	0	12	0
The retaining Fee	0	8	0
Causing an Act of Suretiship (which are as short as Rules in our Courts of Law) to be written out	0	2	0
For going to the Client at several times, and for other vacancies	8	0	0
And for extraordinary troubles, vacancies, and interpellations had and done in the said Cause, and for making and ingrossing the accompt	6	0	0

As if the former reckoning were not enough in a plain Action of Debt against an Executor in his own wrong, for which our Laws do give no hard to be come at Remedies. And the Laws of those Countreys, though more tediously circular, do pretend

tend as much, but with far greater charges, and leſs performance.

When it being ſo far from a Tryal or Sentence definitive in the principal Cauſe (the Sentences before accompted for being but Interlocutory) as it being not arrived to a *Litis Conteſtation*, or as we call it, *An Iſſue joyned*. One of thoſe Cauſes and the Proceedings thereupon, doth coſt no leſs for the *Proctors* Fees and Reckonings, according to their manner of Cravings and Accompts (the *Advocates*, *Greffiers*, and other *Writers* Fees and Reckonings, and the Plaintiffs own attendance and charges not included) then Five pound and ten ſhillings ſterling, which in our Law would many times in one Term, and very often in two Terms have been after appearance brought to a Tryal, and the charge of the Tryal it ſelf defrayed, as to the *Attorneys* and *Prothonotaries* Fees upon a Bond or common or ordinary Action for leſs then Twenty ſhillings, and until a Plea put in, or Iſſue joyned, the action not being an action upon the Caſe, would not have coſt or charged him

any

any more then for the *Attorneys Fees*, Three ſhillings four pence.

For drawing the *Declaration*, Sixteen pence.

For entring of it with an Imparlance, Twelve pence.

And for the *Attorneys* Fee in the next Term and a Rule to plead, Three ſhillings eight pence.

In *Toto* IX^{s}. IV^{d}

But might increaſe or riſe to as great a Bill or Reckoning, as that of the *Dutch Procureurs*, if our Laws did allow ſuch ſhort prefixions ſo many days of pleading, much buſineſs and more ſolemnities, where leſs would diſpatch it, oftener moving and troubling of the Judges then needs, making Extraordinaries of Ordinaries, and not intruſting, ſworn, and experienced Officers in the *Preparation* or *Order* of Juſtice in matters which are common, or may be done in a known, eaſie, and ſafe way or courſe without them; and if our Attorneys who are inforced to be content with the Antient, and now too ſmall a Fee

of

of Three ſhillings and four pence (which being above One hundred years ago allowed them, was in value of money and proviſion of livelihood to be bought with it, three times as much as it is now) ſhould but reckon as the Dutch Proctors uſe to do for every little thing or buſineſs done in a Cauſe; as beſpeaking at one time, or twice, or thrice going to obtain a Writ or Proces out of the Office impowred to make them; writing of Letters, or peruſing of Papers, conference with their Client or Adverſary, and for every ſmall attendance trouble or diligence, and cut and make as they do in *Holland*, many Fees out of one, and put an *Exciſe* upon every little labor or care taken in the cauſe or buſineſs.

And where they are now, neither a few nor ſo many (as thoſe who out-run their Judgments or Reaſon do miſtake them) and attending their proper Courts where they are admitted, think they have good practiſe, and beſtow their time well, if they have but forty Cauſes in a Term (many not having ten or five) would if they were

reduced to a ſmall or certain number, as they are in *Holland* in ſeveral Cities and places (which will be ſure to procure the Clients more attendance, delays, trouble, charges, and obſervation) be enabled by a multiplicity of Cauſes more then otherwiſe they would have, to make a twenty pence Fee to be as much as four times their three ſhillings four pence Fee, and give five hundred pounds apiece for their places; whereas now it coſts them nothing but ſome ſmall inconſiderable Fees to but ſome of the Officers of the Court for their admittance, and yet make no *Hollandiſh* or great *Summa totalis* in their Reckonings to their Clients, or a large Body or Combination of *Items*, like *Democritus*, or Sir *Kenelm Digbies* World, or Bodies made up of *Atomes*.

Or if they ſhould but whet and ſharpen their wits, as they do there, to overreach and eſcape Ordinances and Regulations, and lie in wait for colours and pretences that may yield them profit or advantage, and reckon as they do, making ſmall or little Fees, go a great way, and ſhew their Clients the

Art

Art of Multiplication; as if nothing were to be omitted or left out, but for *Conges* or civil ſalutes; opening the door to a Client when he knocks at it, making two or three legs or cringes more then ordinary; or for *Hauſſant les eſpaules* making a *French* ſhrug, or gravely nodding of the Head upon the apprehenſion of ſome doubt or difficulty; or for a ſmile, or good words, or fair hopes of the ſucceſs of the Cauſe; or telling him what a clock it is, and when the Court will ſit: And that the Client muſt think himſelf ſomewhat beholding or indebted to him; that he doth not by a neat *Alchimy* reckon ſomething for every one of thoſe Traverſes and Incidents, and turn all the money which he hath or can procure into *Items* and Accompts, would make our now *Engliſh* cauſeleſs-complaints of the chargeableneſs of our proceedings in Law, to be as an indiſcreet and ſinful murmuring without cauſe, in the midſt or heaps of *Mannah*, and a Land of Juſtice; and teach us the difference betwixt a journey, or travelling by the Line and the Circum-

ference, betwixt very well and far worse; and to believe that a light burden far carried, will be more painful and troublesome, then a no heavy one which is not to go so far; that small Fees often repeated, do become great, that the way to make contention grow and last long, and be dear in the end to both sides, is to make it cheap in the beginning, that the Foot of a Dutch accompt is a great deal larger and longer then an *English*, and their Reckonings there by particulars much at one with their *Hostes* or Weerts al te mael, or in gross, and the general as they shall be pleased to geschrieve, or set it down with their Pen or Chalk three or four times, or more, beyond the Travellers expectation.

And although the Court of *Holland*, as well as the Hoogen Rade of that Province taking notice, that the Advocates, Procureurs, and Deurwaerders, (or Serjeants at Mace) *did put down in their Registers, and demand of their Clients or Masters* (as they there stile them) *divers Fees and Charges not allowed, and do repeat the same more often then the business doth really require,*

bringing

bringing great sums of money in Reckoning, in regard of their days, journeys, and other vacations out of the place of their Residence; did by their Ordonnantie or Regulation of the (o) Sixteenth day of *January*, One thousand six hundred fifty and nine according to the forein accompt, and One thousand six hundred fifty and eight according to the *English* (which some of their States do acknowledge to be too narrow and rigid) limit and appoint therein something smaller Fees as to some (and larger as to others) and order the *Advocates* of that Court and Province (*Zealand* being by an agreement made with it in *Anno* One thousand five hundred eighty and two, so united, as they have but one and the same Court of Justice, which resides always at the *Hague*) to receive for a Consultation in great Causes, but six and thirty *Stuyvers*, which is in our money about three shillings *sterling*. (p) *So that under the reward of Consultation, be comprised the labor of making the request, or to visit the same; to the end the party may take a good conclusion*; and for the pleading six

(o) Ordonnanne vanden Hoogen Rade in Hollandt op t'stuck van't salaris van de Advocaten (ende Procureurs) Mitsgaders, Deurwaerders. 16 Jan. 1659.

(p) Ordonnantie, Sect. 3.

six and thirty *Stuyvers*, Ende in kleyne (q) Saecken de helft van de somme inde groote Saecken; and in small or lesser Causes, the half of that sum: *Yet they may take* Voor elcke assistentie die sy sullen doen op incidenten, ende emergentien de Saecke voldongen zynde voor consultatie, *for every assistance which they shall give upon Incidents and Emergencies, the Cause being fully pleaded, eighteen Stuyvers, which is about one shilling ten pence English.* And voor de pleydoye mede *for the Plea also Eighteen Stuyvers*, doch by aldien de importantie ende gelegentheyt van de Saecke breeder, extentie van de requeste middtgaders, moeyelickheyt van de pleydoye merder salaris mochte vereyschen sullen de Advocaten't selve specialick in hare Regissers ende Declaration hebben aente te teyckenen, ende te exprimeren, omme daer op by den hove reguard genomen te worden. *But if the importance and nature of the cause, or a larger extension of the request, together with the trouble of pleading, should require a larger salary, the Advocates are in their Registers and Declarations to note and express it in a more*

(q) Ordonnantie vanden Hove van Hollandt, made at the same time, and of the like tenor with that of the Hoogen Radt, Sect. 5. Ibid. Sect. 4.

Ordonnantie vanden Hoogen Radt in Hollandt, Sect. 4. 5.

more ſpecial manner, to the end, the Court may take notice of it. And where they allow him for making of the *Calender* but eighteen *Stuyvers*, yet when it *ſhall be notably great in important cauſes, may demand and have a greater ſalary according to the Taxation of the Court*, which the Client had better pay at the firſt, then trouble himſelf with another charge and attendance, in hope of not paying that which he ſhall be more likely to be compelled to pay afterwards, and if he get any abatement, will not amount to ſo much as he may ſpend in the ſeeking of it, beſides the inconvenience to himſelf and his Cauſe, in diſpleaſing or forſaking his nimble reckoning, or over-craving *Advocate.* Ibid. Sect. 11.

And if the cauſe ſhould require a greater ſalary, as conſiſting in matter of Law, the Advocate may demonſtrate it to the Court by Annotations, beſides the Signature of his writing, containing, that he deſireth Taxation, to the end, that in the viſiting of the Proces, notice may be taken of it. Which a Client that hath no minde to miſchief or Ibid. Sect. 12.

ſtarve

ſtarve his Cauſe, had better pay then put to a conteſt.

And where they are imployed to appear before *Commiſſaries*, or others in *Loco*, (which is their place of reſidence) ſhall have but eighteen *Stuyvers*, which is but little more then our two and twenty pence: Yet *when the Comparitions ſhall chance to laſt longer then an hour, they ſhall receive as much for every hour.* That *Ordonnantie* taking more care of recompencing their *Lawyers* or *Advocates*, then our ordinary way of practiſe doth in *England*, where the *Lawyers* cannot now maintain themſelves at the *Innes of Court* in the ſtudy of the Laws for ſeven years, until they be graduated or called to the Bar, according as the Rates of proviſion are heightned and increaſed over and above what they were in the Reign of King *Henry* the Sixth. When *Forteſcue* wrote his Book *De Laudibus Legum Angliæ* now above Two hundred years ago (when Twenty marks *per annum* would there have maintained the Sons of Nobility and Gentry) for leſs then Five hundred pounds, or

Ibid. Sect. 14.

or a thouſand marks *ſterling*, before ever they come to get a penny by the Law, or the practice of it: And the ſmaller ſort of them do many times for a Ten ſhillings Fee go a Mile to *Weſtminſter-Hall*, and attend there four or more hours in a morning, and not ſeldom as many hours in as many mornings more, one after another, before they can be heard. And our more eminent Lawyers do many times for a Twenty ſhillings Fee, wait and attend there as many hours, and ſome days; and have many times beſides the care and doing of the buſineſs it ſelf, a leſs allowance for it, then the Dutch rate of hours would have allowed their *Advocates*.

Who if they make a journey *Extra Locum*, (that is, from their place of Reſidence, which there commonly is not very far off) are allowed for every day vj guldren or twelve ſhillings Engliſh, beſides their Waggon or Ship Freights, Diet, and expences defrayed, which many of our ordinary *Advocates* here, where they have not ſo eaſie and pleaſant a way of travelling, would take to be none of the worſt *Ibidem, Sect.* 15.

kinde of employment or payments for it, very many of them coming up to *London*, two, three, four, five or six days journey, according as their Reſidences are more or leſs remote or diſtant at their own charges for themſelves, a Servant or Clark and Horſes, and tarrying there a great part of a Term, do many times return with leſs gains then Twenty pounds ſterling (ſome of them getting not in a whole year the intereſt at ſix *per cent.* of the money ſpent in their education, beſides the loſs of the principal) and not a few with leſs then a quarter or fourth part of ſo much.

And the *Procureurs* are by that ſtreight and unreaſonable *regulation*, as they there think it allowed no leſs then Twelve ſtivers, or our Twelve pence Engliſh for an hour, at or for comparitions *in loco*, and for every hour as much; whereas our *Attorneys* would think it to be a good enlargement of their too narrow Fee of three ſhillings four pence a Term to be allowed after the Rate of twelve pence an hour; which in the common and ordinary attendance and time ſpent upon a cauſe, wherein they

are

are allowed but three ſhillings four pence for a whole Term, conſiſting of a Moneth or five weeks, and never leſs then within a day or two of three weeks, beſides a week or fortnight after the cloſe or end of every Term, would make them a double or treble fee, and many times bring it to Twenty ſhillings, or more, according to the proportion of time ſpent in it.

And although (r) the *Advocates* and *Procureurs* in *Holland*, *having once enjoyed the right of conſultation or retinue about any cauſe in agitation, though the Client ſhould ſpeak to them another time about the ſame cauſe, may not according to that* Ordonnantie *or Regulation, further challenge or put into their Regiſters, or otherwiſe, any right of conſultation or retinue, much leſs when a man doth but ſpeak to them to advance the cauſe without any intention* (where it ſeems their Regiſters or Accompt-Books are like ſome Spring-Locks which over ſnap and are too nimble) *to conſult with them.*

(r) *Ibidem, Sect.* 45.

Yet there is a ſaving, that if they be conſulted *about the production of ſome writings, hearing of Witneſſes, or about any*

Ibid. Sect. 46.

thing elſe which might conduce to the advancement of the Clients right, they ſhall enjoy the right of half a Conſultation.

Ibidem, Sect. 53. And howſoever they are forbidden by that Regulation *to make any Convention or Agreement for Salaries to be given them at the end of the Proces*; yet in caſe of *Triumphe* (which is there uſually ſo termed upon every Succeſs, as well in the beginning or middle of the proceedings as at the Concluſion) of any Cauſe or *otherwiſe* (a very *Comprehenſive* word and taking in of all that was not before excluded or reſtrained) are left as formerly to a Latitude or liberty of reckoning, and a generation of *Items*.

That *Regulation* leaving them in many things to *diſcretion*, or to be taxed or allowed more by the Court, where they ſhall ſeem to deſerve more then ordinary, and onely giving the *Client* a liberty to complain where he dares, or findes his Purſe or Diſcretion able to perſwade him to adventure the hazard, charges, and trouble of it; and the Officers not endangered

gered as ours are in *England*, to a forfeiture of their Places and Offices, but incited or put in minde to be more cautious, and to be ſure ſo to handle the *Client*, or *Man of Controverſie*, as he ſhall neither *Cry*, nor be heard to *Cry* whilſt his Feathers are pulling off, nor have any Witneſs of his grievances and injuſtice.

And yet all thoſe ſeveral *Inlets* and *Outlets*, or ways to evade the ſeeming ſtrictneſs of that *Ordinance*, did ſo little pleaſe their Rechts ghelærdes or Wet gelærdts, or Men of Law, as they being unwilling to be manacled by that Ordinance, or withdrawn from their uſual profits, fell into a mutiny and cry ing one, and all, did for ſome Court-days ſo abſent themſelves from the Plait Bankes or Courts, as the Lords or Judges came and ſat; but none, either *Advocates* or *Proctors* would come at them, until ſome days after that the *Proctors* remembring that they had given money for their places; and that Art on the one ſide, and a *Politick Connivance* on the other, might when the Lords ſhould think they had done enough to make themſelves popular

pular or ſeemingly careful, and willing to make a ſmall abatement to the people, give them liberty enough, (when the *Mobile Vulgus* or giddy-headed people, who thinking themſelves to be then moſt wiſe) as if they had met with a good bargain of *Solomons* wiſdom, or *Epictetus* his Lanthorn) are never ſo fooliſh as when they court their own miſery by changes of Laws or Government, ſhould have pleaſed themſelves with the imagination that their Lawyers who ſhould help them to Right and Juſtice, ſhould be put into *Little-eaſe*) do as formerly they had done, began again to fall to their practiſe; and the *Advocates* one after another, came dropping in to their wonted Pleadings and Employments, and the people well-ſatisfied for a little while with that as they thought *Reformation*; and notwithſtanding that, they had ſuch a fierce Law made againſt the *Advocates*, *Proctors*, and Deurwaerders, began to finde, that unleſs they would *poyſon* and undo their ſuits and buſineſs at Law, and put themſelves for want of good care and advice into a *Labyrinth* of trouble

trouble and delays which would coſt them more to finde their way out of it, then what they ſaved to bring themſelves into it, they muſt pay their *Advocates* and *Proctors* reaſonable Fees and Allowances, and not ſtarve or ſpoil their Cauſes; that the *Advocates* and *Procureurs* would make their cares and labors but proportionable to their pay, and that betwixt the *Advocates* and *Procureurs* and their *Clients*, where none but parties could be Witneſſes, the allowed Fees were but taken as Fees, and the exceeding or other gratuities but as Medicines, and of neceſſity to purge or take off a *Lethargick* humor or dulneſs; which ſmall Fees are apt to cauſe, and would be ſure to make their *Advocates*, *Proctors*, *Officers*, and *Writers* fall into, and that the *Moral* and *Perpetual Law* of every mans being paid for their labor and care, and doing their work according as they are paid, is above all that other Laws can impoſe or put upon them.

Too many of their *Advocates*, *Proctors*, *Greffiers*, *Notaries*, and *Secretaries*, being

ſo

ſo willing to give entertainment to all advantages, temptations, opportunities, and occaſions of gain, as there is no ſcarcity or want, like to be found in their Law-proceedings of *Irregularities*, *Excentricks*, *Delays*, *Put-offs*, and *Exactions*, too often to be met withal in their reckonings; which all that are ſo unhappy, as to have to do with them, need not fear to fail of a certainty of a cauſe to complain of: And if there be any of their Fees which do ſeem to be little or more *dwarfiſh* then others, are but like *Pages* or *Lacquies* to uſher in or attend the greater; the *Stairs* being to be ſomewhat eaſie where the *ſteps* are ſo many, the aſcent of their *Appeals* ſo ſteep and *craggy*, and their continuance and depending ſo long and chargeable, which may make ſuch of their Fees as are not big or bulky; yet often paid or enumerated to be more burdenſome to the Client, then thoſe that are greater, and do not often happen.

For it is well enough known by ſad and remedileſs Complaints, and a lamentable Experience of ſuch as have had occaſion to try the activity of their Law or Juſtice, that

that it is no *Pegaſus*, when a *Girle* or yong Maiden to whom her deceaſed *Parents*, not long ago left, as they thought a competent eſtate at her age of three years, was kept ſo long in ſuit to recover her own, as there being notwithſtanding a conſtant and continued charge and proſecution, no end or determination of it; when ſhe had attained to the age of twenty years, her *Fingers* and *Nails* went ſo far beyond her tired patience, as to have almoſt clawed out the Greffiers eyes.

Whilſt therefore they ſhall either think to pleaſe themſelves or gratifie the ignorant, windy, and inconſtant humors and *phantaſies* of the vulgar or common ſort of people, by endeavoring to make or enact Laws for a ſcanting or denial of reaſonable Fees or Allowances for skill, induſtry, care and labor, to be had and taken in the buſineſs or proceedings of Law or Juſtice (not that *Magiſtrates* are to give any way to exorbitant or exacting Fees in Courts or places of Juſtice, where avarice, unjuſt, filthy and ungodly gain ſhould have neither

place, incouragement or admittance) they will as experience doth daily manifeſt, never be able to bring them to be obeyed or practicable; but as little by that means prevent their abuſes and miſreckonings, as the Woman did the deceit of the Tailors at work in her Houſe, when ſhe locked up the *Bothom* of Thred, and left them out the end to take and draw out what they ſhould need of it in her abſence: And by ſuch a *Regulation* make as ill a bargain or advantage for the people, themſelves, or poſterity (which are not always ſure to have a vote or power in the making of Laws) as he that *hugs* his deceived thoughts and imaginations, with having a good bargain in a Horſe, which would be dear enough at Ten or twenty pounds price, by inconſiderately giving a Penny for the firſt Nail, and two pence for the ſecond, and doubling for the third, and every other Nail, after Twenty eight Nails to be accompted in his four ſhooes, until the *ſumma totalis*, or his coſtly repentance tells him, That he pays more then the price of a hundred, or many Troops

Troops of ſuch Horſes would amount unto. And that when all is done, their pinching and curtailing of Fees, will be as little for the eaſe and benefit of the people, as if where as now there is a competent rate for a paſſage in a Ship at Sea for five ſhillings Engliſh apiece for Paſſengers bewtixt *Holland* and *England*, which ſometimes is accompliſhed in ſixteen, at other times in four and twenty, many times in thirty hours, and but ſeldom exceeds three days and nights; the Maſter of every Ship ſhould be ordered to take of every Paſſenger but after the rate of two pence by the hour; and the Maſters as well as Mariners be left to their tricks, delays, neglects, or pretences by not putting to Sea ſo ſoon as they ſhould, or by ſlow ſailing when they are at Sea, ſomething pretended to be amiſs in the Ship or Tackling; and a Spawn of ſuch like devices, to pick or draw money out of the Paſſengers Purſes, or to lengthen out their time and pay, by occaſion of too often to be met with Caſualties at Sea; foul weather, croſs winds, neceſſity of caſting Anchor, avoiding of Rocks

and Quicksands, or dangers by Pirates or Enemies, and putting in at other Harbors, which would be more inconvenient and chargeable to the Passengers, then twice the former pay or rate for passage, and exceed any reasonable accompt beforehand can be made of it; and make their Lawyers and Proctors, to be as the Soldiers in an Army, unpaid, or but scantly fed or paid; who by a kinde of necessity, as they will be sure to call it, can break thorow pretences of Religion, and the severest Disciplines and Laws of War, into the spoil and pillage of those for whom they undertake to fight, whilst their Commanders, if they will have any use or command of them in other things, are constrained to connive and suffer, and not punish them for it.

And render their Registers and Accompts to be like their Hair-makers or Tailors Bills, whose Canvas-Stiffning, Sowing-Silk, Belly-Pieces, Hooks and Eyes, and many other mechanick, false and filching reckonings, makes the inside or concomitants to cost as much or very near the

the charge of the out-ſide, by that time the work is done, and the making paid for; and maugre all the care and vigilance of the Magiſtrates, Penalty of Laws, and complaint of the people, but teach them where their allowed Fees are not ſufficient or adequate to their skill, education, induſtry, care, labor, or pains; or ſhall not amount to a juſt compenſation or recompence, to delude, and ſtretch their Conſciences, take all advantages and opportunities to pull that from the Client which might otherwiſe have been fairly given, and with ſome neceſſitate, and with others heighten their ſhifts and devices; and in being too much their own *Carvers*, take more then they would have done, if it had not been denied them; and by contriving ſlie and unwarrantable ways to ſatisfie their labor and pains, upon every neceſſity and addreſs of the Client, make their *Bribes* and *Lurches* inviſible, or not to be traced, and the Client glad to combine and keep counſel againſt himſelf, and yield unto it.

Which

Which may perſwade and induce that wiſe and generally well managed *Commonwealth* in a rectified and not *phantaſtical* or *extravagant Liberty* (amongſt many things which *Fate*, *divine Providence* or *Permiſſion*, and a vaſt variety of accidents which diſturb as well as attend all or the moſt part of *humane actions*, will not always permit them to prevent or avoid) to give us and other Nations leave to believe, That their proceedings in Law are not without ſome blemiſhes or deviations; that they have within the memory of man, had (amongſt many whoſe Virtues could not ſtoop to ſuch dunghil baſeneſs) a Rechtes Pere Puis, who was deceived in a Bribe of a Bag of *Ryders* of a ſmaller or ordinary ſort of Coyn, inſtead of a Golden and more valuable. That many of the gripings in their Law proceedings have been, becauſe they keep their Lawyers too hungry, which cauſeth their appetite to be too high, and not to be bounded or kept in order by a ſcanted and inſufficient Regulation or Limitation of Fees, which being in the little effect or probability of performance, rather a

phantaſm

phantaſm or *pretence* of *Reformation* then a reality; and coming not up to the worth, education, quality, labor, and pains of their *Advocates* and *Proctors*, will either neceſſitate a connivance or allowance of the *Magiſtrate*, or occaſion the men of that no unuſeful or ignoble profeſſion to ſhift (which they ſhould not do) or finde out ways to pay themſelves; and prove to be but as a *Complaiſance* or *Courting* of the people, to ſtill and pacifie their groanings under the almoſt inſupportable burthens and calamities of War and Taxes.

And that ſuch a Regulation, if a connivance on the Magiſtrates part, and a neceſſity on the Clients ſhall not take off, or mitigate the fury of it, will but fall under the ſame fate which a kinder and more practicable *Reglement* in *France* of the Advocates Fees, did in the Parliament of *Paris*, in the year of our Lord 1602. when as their Great *Henry* by his Expreſs Authority and Command had cauſed that Parliament to make a Decree, *That every Advocate ſhould ſet down under his hand in the end of his writings, what he had taken for his*

Fees, to the end, that in caſe of exceſs it might be moderated when the Court ſhould proceed to Judgment of the Proceſs: And that from time to time they ſhould give a Certificate what they had taken for the pleading of Cauſes, to be ſet down in the Tax of Charges upon pain of Extortion.

And that Court thereupon making another Law, *That ſuch as would not plead and ſubmit to the former Decree ſhould deliver their names to the Regiſter, and be forbidden to practiſe as Advocates upon pain of falſhood*; which was pronounced in open Aſſembly, there went the next day after out of the Chambers of *Conſultation* by two and two to the number of Three hundred and ſeven Advocates, and paſſing through the Palace Hall, went to the Regiſter to give up their Hoods, and declared, *That they obeyed the ſecond Decree, ſeeing they could not the firſt*; and publiſhed a Remonſtrance, *That the cuſtom of referring their Rewards to the diſcretion of their Clients, was grounded upon the fidelity and learning of the Advocates, to whom they could not reproach, prevarication, or filthy Contracts*

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ſo ordinary as heretofore at Rome, *that the Court it ſelf could not judge of the exceſſive Fees of Pleaders, unleſs they knew the time which had been employed to peruſe the Writings, or ſtudy the Queſtions, that the Sollicitors would give leſs to the Advocates then their Maſters had commanded them* (a cuſtome which ſome of our Engliſh Sollicitors, which are too often made up of broken mechanicks, and men not underſtanding the Laws, have ſo much learned, as one that pretended much to Religion and Conſcience, did lately reckon Three hundred pounds to be ſpent in a ſuit in *Chancery* in Fees upon three Lawyers, when as upon examination of their Books wherein they entred their Fees, there could be found but little more then twenty pounds, or the fifteenth part of it) *and to cover their theft, would make them believe, that they would not give them quittance for ſuch a ſum, though they had taken all that that which is given to Advocates as the Preſident Thou,* by direction and charge of the Court did in another Cauſe declare, *could in no ſort equal the recompence which their*

care, diligence, and knowledge did merit. That the Profeſſion ſhould be favored, to the end, that ſuch as are in that courſe may be encouraged to perſevere, and others invited which might ſucceed them, that poſterity will never approve the counſel which ſome would give his Majeſty to be the firſt which ſhould begin to diſ-favor thoſe who had been always held, and eſteemed amongſt the beſt and moſt pregnant wits of his Kingdom. Whereupon though the Court would not be perſwaded to revoke or change their Decrees, yet the Advocates purſuing their complaints to the King, and ſhewing the rigor and impoſſibilities of thoſe Decrees, he ſent his Letters to the Parliament in Terms (ſaith the Hiſtorian *s*) *conformable to his Juſtice, and the wiſdom of his Counſel, by which it was lawful for Advocates to exerciſe their Function as they had done before the ſaid Decrees.*

(s) *Jo. de Serres* Hiſtory of *France*, 1022 & 1023.

Which Reverſal of the ſaid Decrees and encouragement of the Advocates in a fair and juſt way of practice, was amongſt the many complaints of the people of *France* concerning the abuſe and irregularities

larities of the Juſtice of that Nation, made in the Aſſembly and Remonſtrance of the Three Eſtates, in the raign of *Lewis* the Thirteenth his Son, in *An.* 1615. nor in the Remonſtrance and Propoſals of the Parliament of *Paris* in the ſame year, was never mentioned to be a grievance, or deſired to be brought again under the ſeverity of thoſe Decrees.

CHAP. XXV.

Of Salaries allowed to Judges and Officers, without any Fees to be paid for diſpatch of particular buſineſs, as they ſhall come or happen.

AND that the giving of *Salaries* in *Holland*, and ſome other the *United Provinces* excluding all other Fees and *Sportulæ*, reaſonable and tolerable, to be taken by ſome of their *Judges* and *Officers* (the taking and allowance whereof, prudent *Antiquity* not onely in one; but in all places and ages where

Juſtice

Juſtice hath found any content or good uſage, hath always experimented to be for the eaſe and good of the people) will, if they be not abundantly large, but ſharpen their ſtomachs, and make them to be the more ravenous, if they have not a great eſtate or ſufficient, *Quo ſuis opibus ſuſtinere & tueri poſſint dignitatis decus*, to ſupport or maintain them in their Offices or places; or if they amount to a *Repletion*, but render them heavy, ſluggiſh, froward, and leſs active in the diſpatch of Juſtice; and cauſing as it too often hath done, many delays and obſtructions, drive the Suitors or Clients to finde out ſome Friends or *Privadoes*, who can give entertainment to undiſcovered and unlawful gifts, contrivances, and partialities; and be as inviſible *engines* to make thoſe that would be otherwiſe dull and careleſs of both parties, to be more then they ſhould be friendly to the one of them: And that it is better (as one of their own, or well acquainted with that Countrey, ſaith) *Non tam certa ſtipendia decernere quàm certum quid pro ſingulis*

curæ

curæ documentis (t), not ſo much to allow certain ſtipends, as ſome refreſhments, incouragements, or rewards of their care in particular matters which ſhall be brought before them; and that to allow as they do their *Prætors* or Judges in Criminal Cauſes ſmall or no Salaries, with Fees or Rewards onely upon Sentence or Condemnation to be given them, *Pro minoris vel majoris noxæ aut ſupplicii ratione*, according to the greatneſs or ſmalneſs of the faults or puniſhments, would with us that have no ſuch cuſtom, be deemed to be too great a temptation to ſeverity, and render them more like *Rhadamanthus* and his infernal Collegues, then thoſe that ſhould be *veluti Dii* as Gods, diſtributing their Juſtice with convenient Mercy. And that if there could be Judges and Officers in Courts of Juſtice, made or found out, who ſhould be to all Suitors and Men of Buſineſs in the Law, as *Eliſha* the Man of God was to *Naaman* the *Syrian*, after he had cured him of his Leproſie, and take no *bleſſing* or *reward* for the good or juſtice which they ſhould do, yet there would not want

(t) *Diſquiſitiones Politicæ, Edit. Hagæ Comitis* 1650, 235 & 236.

want ſome or other amongſt their *Menial*, Wives and Children, Kinred or Friends, who would like *Gehazi*, either be ready to run after, or *truck*, or trade with them beforehand, for ſomething for themſelves or their friends, and think the gain of ſuch doings to be but a kinde and comfortable Leproſie.

To prevent which, and the many temptations which commonly do attend the doing of buſineſs, or laboring without any other encouragement or recompences, then a certain but diſproportioned ſalary or yearly allowance, the no giddy or imprudent ages paſt have in the morning and youth, as well as the *Meridian* or evening of time, held it to be as beneficial and profitable for the people, as it was juſt and rational; where yearly ſalaries were given to Judges and Officers, in the Adminiſtration and Execution of Juſtice, to add the liberty of receiving ſuch reaſonable and moderate Fees as were or might be appurtenant, or incident to their pains and places.

Some

Some Resemblance whereof (if it extend not to a direct Pattern or warrant) we may perceive in Gods own Appointment, and Order for the *Levites* and Priests of the *Jews*, (*u*) whose Offices were not meerly Ecclesiastical, but had some mixture in them of Civil affairs and Judicature; and besides the 48 Cities with their Suburbs, and their Tithes allowed for their support and maintenance, had certain Oblations and Fees given unto them in their several Offices and imployments, by an eternal Law (*w*) and Statute of Gods own making, appropriate and allowed unto them, *Qui quod pingue haberent otium non tantum omnia legis sed et medicinæ aliarumque Artium diligenter ediscebant ut et Egiptii sacerdotes*, (*x*) who having much leasure, did as the *Egiptian* Priests, not only diligently study the Law but Phisick, and other Arts and Sciences (not thinking or presuming as some Phanaticques and Phantasticques have of late in *England*, that Godly men as they please to call themselves, may without knowledge or learning by a light within them

(*u*) *Cuneus de repub. Hebræorum* Cap. 11.

(*w*) Deut. 17. 8.

(*x*) *Grotius in comment super* 17. Deut. 9.

find the way to do right or Justice) *ideoque*, saith the learned *Grotius*, *primis seculis ex illis ut Eruditioribus senatus lxx. virum legi maxime solebat.* And therefore in the first ages the Senate of lxx. were for the most part or commonly chosen to be Judges; As it plainly enough appears in the choice of Judges by *Jehoshaphat*, in whom there were good things found, and the Lord was with him, *because he walked in the ways of his father* (y) *David*, setting the *Levites*, and the Priests, and the chief of the Fathers of *Israel*; *for the Judgment of the Lord and for Controversies.*

(y) 2 Chron. 19. 8.

Upon which or the like ground or consideration, (z) *Moses* who was a Priest as well as a King, and a Judge as well as a Priest, being by God himself commanded to consecrate *Aaron* and his Sons, and in the doing thereof to perform several Ceremonies and Sacrifices, was by Gods own direction to have for his part or share the *Brest of a Ram* of *Aarons* consecration, when he had probably at that time a maintenance and revenue peculiar and proper for the Governor, Leader and

(z) Exod. 29. 26.

and Prince of that people according to the Proof or light which may be gather'd from the 40. 44. and 46. chapter of *Ezekiel*, where in the viſion ſhewed to the prophet *a large Portion of Lands, and the holy City (a) were aſſigned to the Prince to eat Bread before the Lord, and to be for an Inheritance*, and by the fifth of *Nehemiah* in the great poverty and wants (*b*) which were then upon the captived remnant of *Iſrael*, in their return to *Jeruſalem*, and endeavours to re-build it, refuſing the *Bread* of the former *Perſian* Governours, did *accept of a dayly proviſion of Oxen, Sheep and Fouls, and in every ten days, ſtore of all ſorts of Wine*, which though it were *ex publico* ſeems to be no other than arbitrary and Caſual retributions, ſometimes more, and ſometimes leſs, for the ſupport of his place and dignity, and in reſpect of the benefits which the people received by it in the cleanſing of a Leper (*c*) the Treſpaſs offering as well as the Sin offering, was allowed to the Prieſt, who was in that caſe a Judge, and in a diſtinct and ſeperate capacity

(a) Ezekiel 40 44, 46.

(b) Nehem 5. 18.

(c) Levit. 14. 13.

from his other buſineſs of a Prieſt was to have it.

When God commanded *Moſes* to number all the firſt born males of the Children of *Iſrael* of a Month old and upward, and to ſeparate the Children of the Tribe of *Levi* unto him: He was directed to take for (*d*) thoſe that were to be redeemed of the *two hundred threeſcore and thirteen* of the Children of *Iſrael*, which were more than the *Levites*; *five Shekels of the Sanctuary a piece by the Poll, and give it to Aaron* and his Sons, ſome whereof may be uuderſtood to be as Judges amongſt the people, and in caſe of reſtitution to be made of Treſpaſſes, every offering of all the holy things of the Children of *Iſrael* (*e*) which they brought unto the Prieſt, was to be his in the Trial of Jealouſie: (*f*) The Prieſt that Tried and executed the Law upon the wife, had the Wave-offering, being a tenth part of an *Ephah* of Barley meale which the Husband was to bring as an Offering for her.

(*d*) Num. 41. 46, 47.

(*e*) Num. 5. 9, 10.

(*f*) Num. 5. 15. 25. 30.

It being very probable, and may without

out any Torture or Straining of the Holy Scriptures, by what may be perceived in Gods word; Holy writings and examples: And deductions from thence be very well understood to be the meaning and intention of God, that he would not deny the Judges over the people of *Israel* a Competency of means and subsistance fit and proper for them and such lawfull Emoluments and Profits which might arise or come by their Charges and imployments, when as they who were to neglect and lay by other matters and things which might bring them profit and advantage; should thereby also loose that which otherwise might be had or saved by or out of their own Estates and affairs belonging to them. For certainly the Judges and Officers of the Law in *Israel*, by what appears in Holy writ for their having allowances or Fees for particular Offices or Duties, besides their fixed allowances or yearly stipends (of which the Book of God as it doth in many other things not prohibited, is not altogether silent) are not to be Imagined

ned to be left in a worſer Condition than Souldiers or men of War *who were not to goe to warfare at their own Charges*, and although they were commanded to be content with *their wages*, (*g*) *and to do violence to no man*, were not without their military and juſt rewards and expectations as part of the ſpoils taken in War and the like which by Gods own command were allowed them with which the light of reaſon that *divini Luminis Radius*, emanation of the Divine wiſdom did ſo well inſtruct other Nations, as the *Athenians* thoſe ingroſſers of the wiſdom of *Greece*, and of as much as they could borrow from the *Hebrews* or any other Nations, did not think it fit to deny their ſtanding and continual Senate or Court, and their Judges and Officers at Law, their competent allowances and rewards, which their famous and popular Oratour (*h*) *Demoſthenes* underſtood to be ſo neceſſary as he could not forbear to ſay *quid iniquius quam Senatum & Judices mercede ſua priventur*. And *Sigonius* who hath very learnedly and induſtriouſly ſearched and inquired into

(g) 1 Cor. 9. 7. 9. Luke 3. v. 14.

(h) Demoſthenes *adverſus Timocraten*.

into their Customs, greatly commends therein the Customs of the *Athenians* which was so little believed by the *Romans*, their great imitators to contradict or give any obstruction to their excellently strict and severely observed rules of Justice as after their many cares and punishments to prohibit the taking of Mony in the exercise or distribution of it or to make any *pactum* or agreement *pro minimis* for any reward in the least, whereby to incourage a Champerty or maintenance excused not a Judge, *quod tenue nimis sit stipendium*, but however, although the *Prætors* (*i*) and Governors of Provinces were bound by Oath to take no rewards or Fees *solis exceptis salariis pro aliquo præstito beneficio vel ulla velamento cujuscunque contractus* by any concealed or underhand contracts, or upon any pretence of curtesies or benefits received, (their Salaries only excepted) which if they did, every man had liberty to accuse them *velut pro crimine publico* as an offence of an high nature against the Weal publick, and were forbidden to take

(i) Bobadilla politic. lib. 2. ca. 11. n. 72. L. & l. fine C. ad leg. Jul. repet.

take any *xenia* or *munuſcula* gifts or little gratifications *ſed taxa*(*k*) *ſtipendia & quæ curialibus & officialibus debentur niſi congruam laboris mercedem ſuperent & formam a principe præſcriptam*, yet Salaries and the allowances of Fees due to the officers and Clarks of the Court were permitted if they did not exceed the merit of their labour or the rate allowed by the Prince as likewiſe the *xenia* or *xeniola eſculenta aut poculenta ubi ſint modica conſueta boni viri arbitrio conceduntur*: little preſents or gratifications and ſomething towards their food and ſuſtenance where they were accuſtomed and reaſonable, were to be left to the diſcretion(*l*)and conſcience of good men,ſuch *ſportulæ* or remunerations being not denyed by the *Germans*, *Spaniards*,*Burgundians* and *Hungarians* in their *taxa Cancellariæ*, allowance of Fees in their Chancery or other Courts, nor in the Kingdom of *France* by their Eſpices and other Fees, neither do the *Venetians* and *Dutch*,(*m*)thoſe more than ordinary pretenders to conſerve the liberties of their people; ſuppoſe it to be either unneceſſary

(*k*) *Vizzanius de mandatis Principum ca.* 1. §. 153.

(*l*) *Farinacius Queſt.* 3. *Artic.* 12. *n.* 290. *Navarr de dat. n.* 35. & 39. & *Ulpianus in l. ſolet* 6. *Fin. ff. de Offic. procenſul*

(*m*) *In Legibus* Hungariæ *decret Mathie Regis Anno* 1486. *Artic.* 76. *Conſuetudinum* Burgundiæ *de Gabellis* 17. 87. Beſoldus *de Ærario publico Queſt.* 3. Simon *de pratis lib.* 3.

unneceſſary or contradictory unto the good they intend them, and our Kingdom of *England* through all its ages and changes of Government, and the ſeveral races of ſo many of our Kings and Princes have ever found the allowance of reaſonable Fees to our Judges, Officers and Clarks to be very uſefull and neceſſary Concomitants of Juſtice, which prudential and laudable allowances of *Sportulas* or Fees to attend the conſtant and yearly Salaries of our Judges and Officers in the Courts of Juſtice, many of the Officers having no Salaries appurtenant to their Offices, being the beſt expedient to avoid that dulneſs, frowardneſs or careleſneſs (which would hardly be baniſhed from men of fixed Salaries and no other expectations,) and do render the Salaries to be more moderate and adæquate to their labour and attendance by the hopes and help of thoſe Fees, without which the Salaries muſt have been too much or ſuper-abundant, where the labourers in the affairs of Juſtice, are neither to be diſcouraged, ſtarved or

kept too hungry. And were so little of Kin to novelty, or some naughty, or new invention, as it appeareth by (n) *Marculfus*, who living near the time of *Charlemaine* the Emperor wrote above 800 years agoe, and the right learned *Bignonius*'s Notes or Comment upon him that it was the Custom in the Reign of *Charlemaine* in *France*, and the Western Empire, that Judges being made Itinerant by Commission, to hear and determine Causes at the Houses of those which complained for want of Justice; did not only *fræda exigere*, take a third part of the Fines or Penalties for themselves, and inforced their entertainments to be defrayed, but *Redhibitiones* some other Fees and rewards to be given unto them: An usage so antiently entertained in *England* as our largly priviledged *Abbey* of St. *Albons*, which was well enough enabled to undergo such publick addresses and hospitality, and very much used unto it, and divers great Cities and Towns did so little like of the Trouble which those kind of Judges and their then ne-

(m) Marculfi *formula & Bignonii nota in easdem.*

(o) *Mat. Paris.*

cessary

ceſſary and greater trains and retinues brought upon them, as they were glad to procure immunities and priviledges from their Kings, to be no more moleſted with ſuch kind of Juſtice, which may the more recommend the right uſage and reaſonableneſs of Fees in Courts of Juſtice and our Chancery, where the reaſon and difference of Fees in and through all the Ages and Records of time, in the Cuſtom of Courts, in this and all places of Chriſtendome; have been grounded and made to be; firſt, according to the *labour in writing*. Secondly, a more *ſpecial care and skill to be taken and uſed as in a Real Action, more than a Perſonal*. Thirdly, the *quality of the Perſon*, and Fourthly, *the ſuper-eminency of the Court or Judge*, as more in Parliament, where the Houſe of Commons takes for the leaſt Order, which is made 6 *s.* 8 *d.* and the Houſe of Peers 1 4*s.* 6 *d.* or more according to the length; more in the *Chancery*, for an Order then in the Courts of *Kings-Bench* and *Common-Pleas*, and leſs in the *Pye-Powder* and inferiour

Courts then the ſuperiour: And will certainly be more complacent to Juſtice, and have a better effect, than where the duty of Judges are enforced to be proportionate to their Salary, and the labour or attendance of the Officers and Clarks ſhall be made to be dependant upon their Cravings, and many Tricks and Artifices to diſpel the Melancholy of a ſmall or ill paid Salary, and the Clients conſtreyned to purchaſe off their delays, and remove their pretences of much other buſineſs or want of leaſure, when the days of old, and Cuſtom of Nations have by their practice aſſured us, that the allowance of *ſportules* and encouragements of duty hath made the Offices and imployments in the Courts of Kings and Princes to be more cheerfully and honeſtly executed and performed, and that otherwiſe the Juſtice of the Nation would be lazily or dully executed, or which is worſe by ſharking or ſhifting contrivances, and if they were not enticed to their labours and attendance by the many times failing hopes and expectations of caſual Fees

and

and Profits would require greater Salaries, or invent ſome or other unlawfull way of gain or income, nor could Princes procure their Servants and Officers to reſt ſatisfied with thoſe ſmall and antient Wages or Salaries, which antiently have belonged to their places, if they were not ſupported by ſome Vails or appurtenances to their imployments; the avails and gratifications uſually given or allowed to the Servants of Kings or Princes amounting to as much, or greatly exceeding their ſmall and conſtant yearly Salaries, proportionable to Antient and former ages, and a then more cheap manner or way of livelyhood, and may be as warrantable as the Chriſtening, Burying and Marriage Fees, and the Oblation or Eaſter Offerings given to Prieſts or Miniſters; notwithſtanding their Glebe and Tithes, the Fees taken by our Juſtices of Peace or their Clarks, for their Warrants and Recogniſances Fees, when the Juſtices their Maſters have a ſetled Allowance for their attendance at the quarter Seſſions, or

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the Chriſtening, Burying and Marriage Fees, allowed and taken by Pariſh Clerks, beſides their yearly ſetled Wages, and Salaries appropriate and duly paid unto them and may in Judges and their Officers and Clerks be as neceſſary and requiſite as they have been by the Laws and Cuſtoms of *Scotland*, where the Judges or Lords of the Seſſion, as they are there ſtiled, (who are not now and probably long before, were not without a certain yearly Salary or maintenance) were no later then the Reign of their King *Malcolme Marckenneth* Second of that name, who Reigned there in the year 1004. which was 62 years before *England* was invaded by the *Norman* Conqueror, that the Chancellor had for Ilke Chartour of one hundreth pound Land, and above for *the Fine of the Seal Ten Ponnds*, and to his Clerk *for the writing twa Marks*, Item for *anc Letter of Preſentation to ane Kirke or to ane Hoſpital to the Chancellor Forty Shillings*, and *to his Clerk for the writing, aucht Pennies, & ſic pro aliis.* The *Juſtitiar*

(p) *Skenes Regia Majeſtas* ca.

tiar had Ordained *for his ſuſtentation ilk day of his Juſtice* Air *Five Pounds*, Item to his Clerk *for ane man quha componed with the Juſticiar twa Shillings, and the like for ane man quha is unlawed for his abſence, and for ane man quha is clenged by ane Aſſiſe for drawing of him forth of the Rolls, four Pennies, the Crowners Ordained for their Fee, for Ilke man unlawed, or that Compones ane Colpindach and quiach, or ane young Kow, or Threttie Pennies, and for ane man which is clanged na thing*; Item *qwhen a man is Condemned to the death before the Juſtitiar, the Crowner ſal have all the damoned and tame Horſe, not ſhod all the ſheip within Twenty, al the Goats and Swine within Ten, al the Granis and Cornes lyand in Binges, or in broken Mawes, and all the Utenſil or Domicil of the Houſe, within the inward part of the Houſe, that is within the Cruke hinge, and upon the fire.* Ibid. ca. 3.

And have ſo little cenſured thoſe or the like Cuſtoms as they have not refuſed them a fitting entertainment by their

Tax

Tax of Chancery for Writs and other matters, and when not long ago they began to Salary ſome of their Officers Clerks, and debarred them of their former *Sportulas* or Crums of Comfort, found them after in the *Joggs* or Pillery for medling with the forbidden Fruit, or taking that which they ſhould not, who thought they were not ſo kindly uſed as they might have been, when the Advocates, having no reſtraints or meaſure put upon their *honoraria* or Fees, do in their too often Conſultations in many Cauſes uſually receive 20 Dollers, which is more than our *four pounds* Sterling at every meeting, for every mans ſeveral Fee; the Voyages in their Laws being not ſo ſhort or ſecure as ſome of our *Engliſh*, (who never have tryed that way of Sayling with out Card or Compaſs,) would imagine when either the Rocks, Shelves or Quick-ſands, in their Laws are very Craggie and frequent, or their Advocates are well Content to meet often one with another at ſuch kind of Conſultations, and to be well paid for

their

their numerous doubtings ſo frequently made uſe of in *Scotland* in whoſe Offices and miniſterial places of Juſtice, it would be better there were leſs pretences, and more performance as it is in *England*, where although the Fees appointed do not in many things, in a modeſt and neceſſary way of livelyhood come up or hold proportion to their Labour, Hazards or attendance, and the rates of Victuals, and proviſions now trebly heightned, and increaſed more than they were when their Fees were firſt allowed, yet what with their integrities ariſing from their worth and qualities, and a liberal and virtuous education, ſuch as are Officers, Lawyers and Attorneys in our Laws being not *Philoſophantes pauperes incerti laris aut nullius fortunæ* of low or beggerly Families, Eſtates or Fortunes, but are many of them, as well as the Judges, Sons of Gentry and good extractions, which with the fear of the Forfeiture of their places, credit or reputation, or to be indicted for extortion, carries

them ſo beyond or above any baſeneſs, as there are ſeldome any, or but very few Juſt, and to be proved Complaints made againſt them.

CHAP. XXVI.

That the manner of Licitations, Extents or Sale of Goods, and Lands thereupon in Scotland, *are not ſo much agreeable to right reaſon and Equity, as our Extents or Executions, againſt Lands and Goods are in* England.

NOr are the Laws of *France* and other Tranſmarine parts, or thoſe of *Scotland*, (which in matters not meerly, and of late by them called Eccleſiaſtical, are ſo guided by the Civil or *Cæſarean* Law, as to make it in very many Caſes, their directory) ſo imitable or of kin to right reaſon, and natural Equity in their Executions, Licitations, ſubhaſtations or Extents, as

to the Sale of Goods, as our Laws of *England*, which in Goods or Moveables do by the care of their Miniſters of Juſtice, and a better Cuſtom of accepting of ſome of their debtors friends, upon a *fieri* or *a levari facias* to buy or lay down the Money at the rate of the Goods, as they are apprized, or to give ſecurity for their ſafe delivery, if the Debtor ſhall not before the return of the Writ either ſatisfie the Creditor for the apprized value of the Goods, or diſchatge the whole Debt, and thoſe Extremities are by a Cuſtom, and more kind and leſs afflicting uſages of the Natives ſo often taken off, or ſome way abated, as there is not, nor needs very ſeldome to be any publick Subhaſtation, Shame or Outcry made thereupon, and where the Judges in *Scotland* do in ſuch Licitacions and Subhaſtations, *quæ lege intro ductæ ſunt non conventione partium*, which are Grounded upon Sentences or Judgments at Law, and not as our Fines for aſſurances of Lands are in *England* by Agreement of parties *ſupplere locum debitoris*,

Craig *de* Feudis lib. 3. Dieg. 2.

as their *Craig* ſaith in caſe of not appearing and ſatisfying in matters of Debt, after a Sentence and Decree obtained, do by their Miniſters of Juſtice, (who as in all other Nations do Act by their Authority and put it in Execution) ſell the Debtors Goods upon a publick Crye and Proclamation, which manner of tearing of Debtors and adding ruine and ſhame to their preſſures by an invitation of *Harpies*, and men of no Conſcience to buy them and make a gain and advantage out of their miſery: *Tully* could above ſixteen hundred years ago, ſo much take notice of, and pitty as he ſaith, that *ut inveteri illa ſectione diverſi Creditores membra debitoris, et nexi lacerabant & ſecabant*, as Creditors did in former times cruelly cut or might cut in pieces the Debtor, or he who was kept in Priſon for debt, and bound with Chains and Cords (as the manner then was) for ſatisfaction of their debts, which for the Cruelty and Horror thereof, in the opinion of *Aulus Gellius*, and ſome other *Roman* writers, was made only

Cicero *pro Quint.*

Aulus Gellius *Attic. noct.*

only for a Terror to affright men into a greater care of paying their debts, but was ſeldome put in Execution, *Ita bonorum venditione bonorum emptores ut carnifices ad reliquias vitæ lacerandas & diſtrahendas conveniebant*; So in the publick and enforced Sale of Goods, buyers did flock together, and make all the haſt they could to tear and rend in pieces the Reliques of that which remained of the Debtor, to ſupport and ſuſtain himſelf and his Family.

And whereas in *Scotland* the Lands of Inheritance of the Debtor, as well as an Eſtate for Life, may in defect of Moveables or Goods be apprized and ſold upon a Decree or Sentence for Debt; our more Equitable Laws of *England* where Lands by Leaſe may, as a Chattel be extended and Sold, and that Lands, if not entailed and thereby tied up to the Will of the Donor, may as a Fee ſimple Eſtate, be extended not only during the Life of the Debtor, but whilſt it is in the Right or Poſſeſſion of his Heirs, do not permit or think it to be according to

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the Rules of right Reaſon or Equity to ſell the Debtors Lands in Fee ſimple whereby the Debtor having Lands of Inheritance worth one Hundred pounds *per Annum*, which is worth to be ſold, Two Thouſand, or eighteen Hundred pounds might with ſome care, be able to pay the Debt in a reaſonable time, and was moſt likely to have upon ſuch an Eſtate a Stock of Cattel, beſides Goods and Houſhold ſtuff, worth thrice the Money of his Debt to have all his Lands Sold, and Eſtate ruined and torn in pieces, who by his Perſon which may be taken in Execution, or the Rents and Profits of his Lands, which if entailed, might be extended, during his Life, might be able, or enforced to pay it, but to have his Lands ſold ſuddenly, at a ſmall and low rate, and whilſt he ſhould Purchaſe ſome other Lands with the remainder, after the manner and uſage of *Scotland*, muſt with his Wife, Children and Family, be in the diſgrace and diſcredit which inevitably follows upon ſuch a Sale and misfortune: Be

turned

turned out of all at once, and have a Stock of Cattel, without which he cannot well, or without much loſs or diſadvantage, manage or live upon his Lands, or any other Lands, if the Sheriff or Officer ſhould ſell the Lands or Goods worth two or three Hundred Pounds, at under rates, when as the third part of the true value thereof, might have ſatisfied a reaſonable or conſcionable Creditor, or more equal or leſs furious Laws, and be conſtrained for want of Houſe or Lands to keep them, or to ſell what ſhall have eſcaped the Hands of the cruel and mercileſs Creditor or Miniſters of Juſtice, who may pick and chooſe, and ſell the beſt at loſs and prejudicial Rates and Prizes and like an exile or wanderer, waſt and ſpend the reſidue of the Money which was made of the Land, before he can ſit himſelf with other Lands to be purchaſed with the Remainder, and if he ſhould in a years time find out ſome other Lands for an Habitation, it is more likely to be ſome that is too far remote

from his Friends, Kindred, Alliance, good Neighbours, or Conveniences of Health or Profit formerly enjoyed, when alſo their Licitations, Auctions, and Subhaſtations, or Sales upon Extents or Executions, after all their Proclamations and Solemnities made and uſed therein, do not bind *inter Actorem & Reum* or *Debitorem*, but leaves the Heir at liberty to redeem it as they do upon their *wadſets* or Mortgages by paying the Money, Charges, and Intereſt at any time within ſeven years after; And if the Debtor, after he is undone by ſuch a feirce Execution, ſhall complain and require *Actionem auctionis ſive appreciationis reciſſoriam coram Senatu*, ſhall come before the Lords of Seſſion, and deſire to have the Execution reſcinded, for that the Creditor might have found Goods enough, and Moveables to ſatisfie the Debt, it hath as not ſeldome alſo to others, complaining in the like manner been denied and anſwered

ſwered that *cur non ea bona cum (t) haberet ipſe potuis vendidiſſet & a Debito eatenus liberaſſet* why he did not rather ſell thoſe Goods himſelf, and have paid and freed himſelf from the Debt before.

(t) Craig *lib.* 3. *Feudorum* 2. Dieg. 2.

And as little to be deſired or initiated, is the way and manner of the *Decreits* of *Scotland*, Cries or Proclamations in *France*; From whence, as Mr. *Adam Blackwood*, a learned Scotchman, writeth many of their Uſages and Cuſtoms, learnt by *James* the Fourth King of *Scotland*, were introduced and brought into *Scotland*, or the Ringing of a Bell, as in *Holland* and ſome of the *Belgick* Provinces.

CHAP. XXVIII.

That the Decrees of Scotland, *Cries or Proclamations in* France, *and the Ringing of a Bell in* Holland, *and some of the* Belgick *Provinces: Neither do or can make so safe and firm an Assurance of Lands, as our Fines or Recoveries do in* England.

FOR that none of them will yield so good a Barre or Quiet, as our Fines with non-Claims do in *England*, which after five years non-Claim (being a more reasonable time, do Bar as well Privies as Strangers, having their Titles accrued, and being freed from the legal Impediments of Minority, Imprisonment, Coverture of married Women,) *non sane* memory, and of being absent beyond the Seas, but do take up and expend a greater Portion of time to less purpose.

Before which reasonable time of Five years,

years, allowed for their Claims or Entries to any Lands they had right unto. The people of *England* did so little like or approve of the shorter time of a year and a day, which the Common Law of *England*, as well as the Statute (u) made in the Eighteenth year of the Reign of King *Edward* the first, *de (w) modo levandi* Fines, had limited them, as they did in the 22d. year of King *Edward* the third, Petition the King in Parliament, (x) that there might be no more Barrs by non-Claim, which being then deferred, was upon their Petition in Parliament so pressed and Prosecuted, as in the (y) 34th year of the same Kings Reign, it was enacted and Ordained, that *the Plea of non-Claim of Fines thereafter to be levied, should not be taken or holden for any Barre in time to come*; and when after the unhappy Wars of *York* and *Lancaster* were ended, wherein many Estates and Lands had layen open unto some mens powerfull and oppressive Claims, and required some after-Establishment and Settlements in the right Owners; and that to avoid

(u) Cokes 5th. Institut. 262.

(w) 18 E. 1.

(x) Petition in Parliament. 21.

(y) 34 E. 3. ca. 16.

ſtrifs and debates: An Act of Parliament was made in the firſt year of the Reign (z) 1 R. 3. of King *Richard* the third, and another in (a) 4 H. 7. the fourth year of (z) the Reign of King *Henry* the ſeventh, (a) (being one Hundred Eighty nine years after the Statute of the 34 of *E.* 3. to take away non-Claims was made) to ſtrengthen Fines, and make them as they were before the Statute of 34 *E.* 3. there was no leſs a time thought fit and reaſonable to be limited, than five years after the Fines were levied and ingroſſed (which legally could not, as to the ſolemnization and perfecting thereof, be within leſs than half a Years time) for all Perſons, whoſe Titles were accrued, being of full age, *ſane* memory, out of Priſon, within the Land, and Women Uncovert, to make their Claims or lawfull Entries, and for a greater warning to the people, or ſuch as might be concerned in the defence of their Rights in caſes of Fines to be levied of Lands, to which they had any right or Title: A tranſcript of the Fine (beſides the Proclamations made

in the Court the ſame Term, and three Terms after was by a Statute made, in the firſt year of the Reign of King *Richard* the third to be ſent to Juſtices of Aſſize (*b*) in the County where the Land lieth, to be there Proclaimed in every of the Aſſizes, to be there holden for that year, and a like Tranſcript to be ſent to the Juſtices of Peace of that County, to be ſolemnly and openly Proclaimed at the four General Seſſions of the Peace, to be there alſo holden for that year. And for more Caution, and to prevent Surprize, and that none might pretend Ignorance, a Table containing the Contents of every Fine, was by the Statute made, in the 23d (*c*) year of the Reign of Queen *Elizabeth* to be ſet up the next Term, after the Fine levied in *Weſtminſter*-Hall, the moſt Publick and General place of Juſtice in the Nation, and to be likewiſe affixed by the Sheriff of the County where the Lands lie, in ſome Publick place at the next Aſſizes after: And our Laws of *England*, were ever ſo unwilling to have any catched or ſurpriſed in Mat-

(*b*) 1 R. 3. ca. 7.

(*c*) 23 Eliz. ca. 3.

ters

ters or Titles of Land, for want of a reaſonable time upon Actions brought or commenced, to plead or make defence thereunto, as in Dower, where an Eſtate for Life could only be recovered, they allowed five Returns; and in *Formedon*, where an Eſtate of Inheritance was Claimed nine Returns, between the *Teſte* or date of the Original Writ, and the Return of the Proceſs made thereupon was alſo allowed, as may appear by the Statute called Dayes in Banke for real Actions, made in the one and (*d*) fiftieth year of the Reign of King *Henry* the third, the leaſt of which dayes or times given, amounted to three Moneths, and where the Original Writs were brought in on *Eaſter* Term, did by the interpoſition of the Summer or Harveſt vacation give the Defendant as much time almoſt, as five moneths. *Hengham*, (*e*) who was Chief Juſtice of the Court of *Kings-Beneh*, in the Reign of King *Edward* the firſt, giving us the reaſon of ſuch lawfull warning and prefixions in Actions concerning Lands,

(*d*) 51 H. 3.

(*e*) Hengham

Quia

Quia curia Domini Regis neminem vult decipi, becauſe the Kings Court or place appointed for Juſtice, would not ſuffer any to be deceived or ſurpriſed, our Common Law not giving alſo leſs than a (*f*) year and a day to preſerve a right of Entry after deſcent or dying ſeiſed of a Diſſeiſor, and an Act of Parliament ſince enlargeing it to five years, when the Diſſeiſor came in by force, and without Title, and continued in a peaceable Poſſeſſion without Claim or Entry made; And the Civil Law which gave the *French* and *Dutch*, and other Forreign Nations, who are ſo much guided by them, the limitation of a year and a day in matters of Complaint *en cas de ſaiſine & novelleie ou du trouble*, in caſe of Seiſne or trouble, hapning upon Lands *ou es materies des les retraicts Lignager* or upon Redemption to be made by the next of Line or Kin, ſaith the learned (*g*) *Paſquier*, and was as early in uſe amongſt them as the *Raignes* of King *Peppin* and the Emperour *Charlemaine* who did, as *Tiraquel* well conjectureth, allow the overplus

(*f*) Cokes *Inſtitutes, continual claim.* 250. 255. 32 H. 8. ca. 33.

(*g*) Paſquier *Recherches de* France. lib. 4. ca. 29.

of

of a day *ad ſubmovendam controverſiſſimam controverſiam utrum dies Termini computetur in Termino*, to take away the hotteſt and ſtiffeſt kind of Controverſies, whether the firſt day of the prefixion of the Term of a year ſhould be included or excluded, and at this day in *Holland* the year and day are in ſome Caſes, as *poſt vacuam Feudi poſſeſſionem*, after a Tenants admiſſion into Lands which is void, or no man Claims, in the allowance of a year and a day given to obtain an inveſtiture; *dies pro ſex ſeptimanis accipitur*, a day is taken and underſtood to be ſix weeks, as the *dies utiles* dayes of Grace or Favour, and to any that ſhall rightly conſider their *vaſallorum feuda*, and *Subinfeudationes* the manner of their Tenants, holding of their ſuperiour Lords, and their Subinfeudations, which as free as they are, or would be, is there taken to be no diſparagement or leſſening of their Rights or Liberties, in the admittances into the Lands which, they hold of them it cannot eaſily be believed, that ſuch a Cuſtome of ſhort præfixions or ringing

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of Claimes or Titles by the Bell, can either be generally or much uſed, or to have any Foundation or Warrant from their feudal (*b*) Laws, or reaſonable Cuſtoms; ſo as the difference betwixt the benefits (amongſt many others, which are not here enumerated) accrued by our Fines, and the Barrs by Statute and Common Law, upon a non-Claim after five years, and the Title accrued, and Impediments removed; now as it were eternally fixed and faſtened unto them, and the Decreits, Auctions, Limitations and Prefixions uſed in *Holland*, and the parts beyond the Seas is, that ours are more ſolemn, more binding, and more rational (and therefore by the reaſonableneſs of the time prefixed, the more binding, and leſs ſubject to Cavil, or after Controverſies, and theirs is ſo ſuddain, ſhort and unreaſonable, as may rather make, than leſſen Controverſies, breed and occaſion Complaints and reſiſtibilities of Juſtice, lengthen the *Querelles*, as they ſhall either appear to be juſt or difficult, and

(*b*) Cornelius Neoſtadius *de feudi juris ſcripti Hollandiæ & Weſt-Friziæ ſucceſſione.* 36, & 43.

ence men to a continual and almoſt indefatigable inquiry and purſuit after theirs, and that ours, after that reaſonable time of five years (*b*) elapſed, without any Claim, after the legal Impediments removed, becomes ſo mighty and impregnable, as nothing of Law (unleſs in caſe of very manifeſt and ſubſtantial Error) or equity (if no fraud appear to be in the obtaining of it) or appeals, or petitioning to the King in Parliament; which are very ſeldome, and are then upon great and pregnant Grounds of right reaſon and Equity, only relieved,) being eaſily and with no great charge obtained, do aſſuredly procure a grand and unalterable quiet and repoſe of the people in their Eſtates and Common Aſſurances, which in that particular, and its care of an univerſal good remains, as it ought to be hard hearted, pitileſs and inexorable, though the hardſhip, reaſon and Equity of ſome particular Caſes, might ſometimes otherwiſe deſerve it: And that their manner

or ſeldome uſed Cuſtom in *Holland*, and the parts beyond the Seas of confirming their Titles, which are gained by a ſhort warning (which amounts to little leſs than a ſurprize (by ringing a Bell or making publick Cries or Proclamations with ſhort prefixions) doth but aſſiſt the mighty, or oppreſſors, weaken the hands of the Poor, or tire out their Suits or Petitions, coming to complain of it, when the States of *Holland* who are many to be ſolicited or attended, or the King of *France*, and his Councel, as it ſhall happen in their ſeveral Dominions, ſhall by Charters or Confirmations made thereof, have given unto ſuch a Purchaſer, contriver, or wrong doer, as much more Title to be added to the non-Claim, as the prerogative of their power, old dormant Titles of Eſcheats, confiſcations or attainders, may largely enough entitle them unto, and be ingaged to back and maintain them in a Poſſeſſion, many times unjuſtly and oppreſſively gotten, which may be the reaſon why

the greater and richer ſort of the *Scottiſh* Nation, do upon many of their Decreits, and Licitations, or tranſport of Lands, take ſo much care to gain a confirmation or grant of the ſame Lands by Charters and Grants of the King, or Supreme Magiſtrate, or their Superiours, for which they can be content to be at extraordinary charges, whereby to accumulate Rights, and make a better Title to themſelves.

Whereas our Laws have on the contrary ſo much laboured to avoid ſuch oppreſſion, doings and unjuſtice, as in the 21 years of King *James*, an Act of Parliament was made to quiet all mens Poſſeſſions where the King or Crown was entituled in matters of concealments, where nothing had been anſwered or paid out of ſuch Lands to the King or Crown, within ſixty years, or that ſome Rent had not been in *ſuper* or charge upon Record in the *Exchequer* or Court of Revenue within that time: And Mr. *John Jones* of *Nayoth* a great Reformer, as he pretended, but

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a moſt certain Scandalizer and Perſecu-ton of the Laws of *England*, which were more righteous than himſelf, ſped ſo ill in his Printed propoſitions of taking away delays in Courts of Juſtice (which in every Action are for the moſt part occaſioned by the Plaintiffs or Defendants or ſuch as they imployed, and cannot with any reaſon or truth all things conſidered, which ſhould be conſidered, be charged upon the Laws or Courts of Juſtice) and quieting mens Eſtates by Commiſſion to be taken out of the *Exchequer*, and entitling the Supreme Magiſtrate thereunto, as after ſome of his own Experiments made thereof in behalf of ſome ſilly people, whom he had perſwaded to admire and truſt him; he was by the *Barons* of the *Exchequer* in the time of our diſtempers, for more than one groſs and foul abuſes committed fined and committed Priſoner to the *Fleet*.

Nor ſhould our people of *England* be ſo willing to Exchange their more ſafe,

more

more binding, more rational, and leſs diſparageing way of common aſſurances, for that moſt certain Canker of credit, Caterpiller of Hopes and induſtry, the Decreits *Bans*, cries or Proclamations of *France*, or the ruining way of ringing a Bell in *Holland*, and ſome other its adjacent Provinces, if they would but conſider that the *Decreits*, cries and Proclamations of *France*, but ſometimes uſed upon the Sale or Tranſport of Lands, are only but in caſes of great diſtruſt and Jealouſies, many of the more generous part of that Nation ſcorning either to require or give any ſuch credit ſpoiling aſſurance when they may be otherwiſe ſecure enough, and do therein ſomething imitate our *Engliſh*, who do but ſeldome cauſe ſome that ſell their Lands, to diſcover upon Oath any Mortgages, former Sales, or other Incumbrances, which might prejudice the Purchaſor, the Decreits *Bans*, cries or Proclamations of *France*, being ſo ſubject to inconveniences and complaints, and performing ſo little in their under-

undertakings, as *Charles* l'*Oyſeau* (*i*) a learned Advocate of *Brance*, hath taken ſome pains to recount the many miſchiefs and abuſes which do bear them company. And the manner of Aſſurance of Lands, Mortgages, Leaſes and Aſſignations in *Holland*, and the United Provinces by regiſtration, which hath been there a Cuſtom ever ſince the year 1579. after their revolt from the King of *Spane*, is not only in the uſe and practice of it very troubleſome, when it muſt be regiſtred, as well in the place where the head Magiſtrate reſideth as in the *Dorpes* and Villages where the Lands do lie, but indeficient enough to cauſe an abſolute quiet and tranquility in the purchaſed or tranſported Eſtate, for that the buyer, or he to whom the Land is tranſported, is not obliged to anſwer to any further Charges or Incumbrances, then the Seller or diſcoverer hath manifeſted: And if any man hath an Action or pretenſion which was diſcovered; he may challenge the ſame at any time within Thirty years: And the

(*i*) Charles l'Oyſeau *traile de Seigneuries* ca. 8. P. 194. & ca. 14. 359.

Buyer

Buyer may (if he will be at the charge) fortify his Aſſurance by a *Willing-Decree* of the Court of *Holland*, to Grant and paſs over the Lands unto him, there being ſome more occaſion or neceſſity there of ſuch a Regiſtration, to the end it might appear, that the 40th penny, or in ſome places more hath been paid to the Eſtates or Common-Wealth, and is in that not much unlike the Inrolling of Licences or pardons of Alienation with us of Lands holden in *Capite* or by Knight Service, or the entring of Admiſſions or Surrenders in our Court Barons, that the Lords of the Mannors may know how to demand or receive their Fines or money due, and what ever our Innovators may hope for in ſuch a *Dutch* way of Aſſurance, thoſe that know the Laws and practice thereof in thoſe Countries, are able to aſſure them and others that there will be but a little hold or footing in the *Willing Decree*, when the Judge or States will not ingage in a Warranty, if it ſhould happen that the

the right owner ſhould appear, or one who hath any Hypothecation upon the Lands, or that there ſhall be any incumbrance ariſe by reaſon of Minority of Children, or the Pretenders being out of the Country. And if the Land be claimed, the Buyer hath only *Jus retentionis* a right of Poſſeſſion, and to demand Caution or further ſecurity *pro evictione* (there being with us a Caution or covenant of the Seller at the firſt inſerted into the Deed of Bargain and Sale, to free the Purchaſer from all manner of Claimes and Incumbrances) if it ſhould be recovered againſt him, and there is no other means beſides the caution *pro evictione*, or an Action againſt the Seller; And whoſoever claimeth the Land is only to prove that he is the right Owner.

And ſo little do their ſo much boaſted of notarial Acts, ſealed Paper, and Regiſtrations, either prevent Deceits or caution, and ſecure Creditors, as there was notwithſtanding no longer ago than in the year of our Lord 1669. a great

Heer or man of eminency amongſt them, and of Kindred to many of their Magiſtrates convicted and ſeverely puniſhed for the forging of many Bonds and Obligations from the *States*, and aſſigning them to ſeveral perſons.

And the ſecurity or aſſurances for Purchaſers in *France*, may be as ſubject to infirmities and dangers, and not to be always foreſeen caſualties when their *Decreits bans* and Proclamations do not there, when they are made uſe of yeild after all the Cries and Proclamations, and ſo many ſeveral dayes prefixed Certificates and Retorns, of the Serjeants and many other nice ſolemnities, uſed at *Orleans*, and in the Dutchy of *Valois* at *Montargis Theroueine* and other places in the *French* Dominions, any abſolutely ſafe and well grounded ſecurity, for ſuch as adventure upon them, but do (*i*) appear to be not ſo much binding as the barre of our Fines after Non-claims, but do moſt commonly leave the Buyer to the after pretences of ſuch as are not of age

(*k*) 1. Tome *des Couſtums du* France *par.* Charles *du* Moulin.

age out of Priſon, *ſane* memory, or in the power or Coverture of a Husband, or ſuch as hold in partage, or were *Poſthumes*, or within the *Carbonian* Law, or ſome or other after Claims or pretences, either in Law or Equity, upon ſome newly emergent or contingent Eſtates or Reverſions, which may happen until their preſcription of thirty years is run out; *paiſiblement*, *franchement*, *publiquement*, *et ſans aucun inquietation*, peaceably, freely, publickly and without any interruption, *et en Mante et Meulant heritage vendu par Decreit eſt ſubject a retraicts*, and in *Mante* and *Meullant*, Lands of Inheritance ſold by *Decreits*, are ſubject tt be recalled by the next of Kin.

And therefore our *Blew apron* reformers, who are ſo afraid that any of their ill gotten Eſtate, or money put out to Intereſt, or laid out upon Lands, ſhould by a ſeldome accident miſcarry, ſhould do well to take into their conſideration that Laws are *ad Civilem hominum conſuetudinem accomodandæ non aliter*

(l) Plutarchus *in Pelitic.*

quam Pharmaca ægri corporis naturæ et viribus to be fitted to the Cuſtoms and manners of the People, as Phiſick to the temper of the body natural, and ſhould be *gratæ populis et poſſibiles moribus locis temporique convenientes neceſſariæ communem utilitatem reſpicientes et* (m) *quales multitudo et populus libenter ſuſcipiant* for common good, poſſible neceſſary agreeable and convenient to the Cuſtoms, place, time or people, to whom they are granted. For the *Ruſſian* Furres or Stoves, will not all the year agree with the hot humoured *French*, nor their ſlaſhed doublets be well endured by the Frozen *Ruſſe*, nor would the manners of *Scotland* ſo well accord with our Oeconomy in *England*, where we ſhould not eaſily be perſwaded to put away our Cooks and Dairy Maids, and take in thoſe of *Scotland*, becauſe a pound of *Scotch* Butter, or a Single Diſh of their meat, as the Common people there do make or dreſſe it, might poſſibly be enough to feed or ſtay the Stomacks of a number of our *Engliſh*, almoſt to a miracle, nor will their lending and borrowing money

(m) Egid. Roman. *lib.* 3. *ca.* 26. Iſocrates *ad* Nicoclem Plato *lib.* 3. *de legibus.*

money upon ſuch Rigid and Jealous Securities, be ſo neceſſary or agreeable to the manners or Cuſtomes of the *Engliſh* Nation, as it may be to that of *Scotland*, where they have neither Mines of Gold or Silver or much Money of their own, their Merchants are but little more than Retaylers to our Retaylers, their ſhipping little more than our ſmall Barks or Hoyes of *Kent* and *Eſſex*, and their Tenants living in great vaſſalage and ſlavery, do pay the greateſt part of their Rents and Tithes iu Bodily Service, Chalders of Victuals, Bolles of Meal or the like, and where the Riches of a few, and Poverty of a many with a Cuſtom not to be truſted upon eaſier Conditions. makes them glad to borrow or get Money, upon any terms or prejudices, for *Aviditas querentis pecuniam facit inſtrumentum Creditori* the wants and deſire of the Borrower, ſay the civil Lawyers, makes him give any Bond or ſecurity to the lender and would not be very welcome to the *Engliſh*, who ſome greedy and devouring Uſurers and Brokers only

ezcepted,

excepted, living in a far greater credit and freedom, have hitherto been used to a more noble kind of Truſt and Credit one with another, and have their Merchants upon the Exchange at *London* in every Moneth of the year in times of Peace, and *Halcyon* dayes trading one with another, and with the Inland Commodities without any moveable Bonds, Regiſtring and renunciations or exceptions; for almoſt if not full as much as a great part of a qurater of the value for a year of all the Lands in Scotland And that the *Dutch*, whoſe antient Laws were for the moſt part renounced with their Soveraign their Lands little, more than half their people, born, bred, and living at Sea, or upon the waters, and of thoſe that are upon Land, the Maſter, Miſtreſs, Children and Servants, are great or little Traders, and their later Laws and Cuſtoms, not ſo long as ours experimented, were introduced by a *Gallimaufrey* of people of all Religions, flocking thither for Trade and a ſuppoſed freedom, who by taking

king of *Domiles* as they there call it, or hiring of houſes, are accounted as Natives, though they be but as we ſay, here to day and gone to morrow, and in that regard ought to give ſtronger and more binding ſecurity than other men, will neither be able to give us, that have ſo great and many real and fixed Eſtates in Lands, any invitation or reaſon to imitate them, until we can love and like their grand variety and multitudes of Taxes and Exciſe, which even of their Nuts and Apples cannot be excuſed; ſupported by a pretended neceſſity of Armies, Navies, Forts and Garriſons in the propagating, their large ſpreading republick, or that our Manufactures or workmen ſhould enjoy the glorious liberty of paying a Tax of as much as a third Penny out of what they earn, or is gained by their work, and believe it to be a liberty and priviledge not every where to be had or to do as the *Dutch* do in their often abſence at Sea, allow our leſs frugal Wives, to govern all

or

or the moſt of their affairs at home.

Wherefore our *Novalmongers* ſhould do well to inſpect the Laws of *France*, to which the Laws of *Scotland* are in ſome things too near of Kin before they are too much in love with them, and conſider their many Intrigues, Delays, opportunities of bribery and invitations thereunto: arbitrarineſs and injuſtice the conſequences of it, the hideous number of the *Seneſchauſes et Balliages* of their ſubordinate little Courts of Juſtice, their Summary proceedings upon which appeals, are moſt commonly expected, *la grande et frequente enterpriſe des Juges Royaux ſur les ſub alternes l' extenſion des cas Royaux par le moyen des Letters Royaux* the great and often attempts made by the ſuperior or Judges Royal, in the extent of their jurisdictions by the means of the Kings Letters or Commiſſions, (many of which do the more often happen, by reaſon of a Tax or Impoſt, put by the King upon the Proceſs of the Law) ſome of them of Grace and Juſtice; and in theſe of Grace remiſſi-

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ons, diſpenſations and priviledges, and in thoſe of Juſtice *lettres excitatives de reſciſions et reſtitutions en entier* Letters excitatives of reſciſions and reſtitutions, amongſt the which are *lettres attributives de Juriſdiction*, Commiſſions whereby they create Juriſdictions, which together with the many Scuffles (*n*) and Skirmiſhes which are there made betwixt the *haute et Baſſe Juſtice* the higher and lower Courts, and the neceſſities of appeal put upon thoſe that are denied Juſtice, drives them from their *Dan* to *Beerſheba*, from ſome money laid out in the inquiring after it, unto none at all or very little, left in their Purſes, with a far leſs ſucceſs than *Saul* did in ſeeking his Fathers Aſſes, which long and tedious courſes in their Laws flying like an *ignis fatuus*, or night miſleading fire before them, may make us the leſs be enamored of them, when we ſee all the Care, Pains and Prudence, which their preſent, no unactive or indiligent Prince (*o*) *Lewis* the 14 hath in the year 1667 taken to abridge and reform thoſe multitudes of greivances,

(*n*) *Enchiridion Juris ſcripti Galliæ edit. Anno* 1556. *Claude Brun. le Proceſs Civil & Criminel impreſſit Anno* 1611.

(*o*) *Ordinance de Lewis* 14 *Roy de* France *& Navarre.*

ces, which thoſe Laws of *France* had faſtened upon that people, did notwithſtanding leave and entail upon them, ſo many delays, circulations and expences in the Caſes of *adjornement*, *preſentations*, *exceptions*, *dilatories*, *interrogatories* and *procedures*, in the Courts of Parliament, great Councel, and Court of Aides, in the firſt inſtance, cauſe of Appeal compulſories, and Collation of pieces, conteſtations and matters ſummary, reproach of Witneſſes, Execution of Judgments, reception of Cautions, Sales of Moveables and liquidations of Damages and Intereſts, as may affright us, into *a libera nos Domine* from ſuch or the the like courſes in Law; good Lord deliver us.

Nor put us to the charge of bringing the Laws of *Scotland* unto us, of which the people of that Nation have ſuch a Regret and ill liking, as they have made it into a by word or ſaying amongſt themſelves: *Shew me the man, and I will ſhew you the Law*; and that their Law is like a *Rams* Horn which hath many crukes.

So

So little comfort if they were more dispatching than they are like to be, may that Nation or any that would be their Imitators, take in those over severe securities by Registrations, which probably had no better an original than the Bonds used *in foro Pontificio et curia sive camera Apostolica* in the Popes Court or Chamber, as they call it Apostolick brought into *Scotland* by the Clergy of that Nation, seven of whom were by the Institutition of the Court of Sessions by their King *James* the fifth, ordained amongst other of the Layety, to be in succession Judges thereof, who in the time especially of Popery, could not be thought to have been ignorant of the *Pontifician* Laws and courses then holden in the Court of *Rome*, and to have made their *dura practica* uncompassionate way of securities in some, at the least conformity thereunto, which (p) *Antonius Massa* a learned Lawyer and practiser in the Courts of *Rome* saith was *ex multis juridicis cautionibus diuturno usu Romanæ curiæ composita et contractuum Instrumentis adje-*

(p) Antonius Massa *Galesius.*

&c. framed out of many cautions and clauſes uſed in that Court and put into writings, and Inſtruments made for the payment of Moneys, and was at the firſt, and in Proceſs of time *ut ab antiquis curialibus traditam accepit*, as he had underſtood, and received it from ancient practiſers and officers of that Court brought into a Cuſtom and uſe, in regard that upon the Popes conferring of Biſhopricks, Abbies, and other Eccleſiaſtical Benifices and promotions unto ſtrangers and people of ſeveral Nations, who after thoſe Spiritual promotions, conferred upon them, returned home into their own Countries, upon their undertaking to pay not only their Symoniacal contracts, but their firſt fruits *Annates* and yearly payment, and other dues to the Chamber, as they called it Apoſtolick, and their Officers within a certain time prefixed by their Bonds and Obligations given for the ſame, whereupon *ſepe contingebat quod plærique datæ fidei obliti non ſoluebant neque ut ſoluere jure cogi poterint niſi citati*

&

& trinis ſententiis Innodati Judicati quæ res camere ipſius procuratoribus labori tedioque erat & diſpendio maxime ubi citandi in longinquis degebant regionibus. It often hapned, that many became forgetfull of their ingagements would not pay or be compelled to pay, unleſs they were cited, and by three Sentences condemned, which brought great trouble, loſs and delays to the Procters or Receivers of the Chamber or Treaſury of the Pope, eſpecially where they which were to be cited lived a far off, or in Kingdoms or Countries remote, and ought to give a very binding and wary Security in Caſes which ſhould ariſe upon bribes, and Simoniacal contracts, of which our honeſt Monk of *St. Albons* in the Raigns of our King *John* (q) and *Henry* the third gave many inſtances, and which that Church in purer times did not allow. And therefore the Popes procurators or receivers endeavoured to make an Obligation in ſuch a form, as they might quickly have Execution upon, without the delays of ordinary Proceſs,

(q) Mat. Paris.

and

and ſending to the Debtors to cite them, and took its name of the Obligations or Bond of (r) the Apoſtolick Chamber *propter ipſius cameræ Creditores & per illius procuratores exogitata*, in regard of the Debts due unto that Chamber, and the Bond made or invented by its Proctors and Receivers as a more ready way to recover them. The cruel and ſtrange Tyes, whereof do as will appear by the form recited in *Antonius Maſſa*, bear a great reſemblance of the Scotch Regiſtrate Bonds, and the Bonds of the *caurſini* the Popes Bankers or Brokers in *England* before mentioned, and would have made *Horace* if ſuch had been in his time more Satirical than he was againſt other unmercifull devices of Creditors of his acquaintance, whom he termed and held to be no better than Poiſon or Hemlock to Languiſhing Debtors.

(r) Antonius *Maſſa Galeſius queſtion.* 20.

(s) Horace

(s) *Scribe decem Nerio non eſt ſatis adde ducentæ*

Nodoſe Tabulas Centum mille adde catenas.

Give

Give Ten to *Nerius* it will not him ſuffice,
Let him have one hundred Hemlock bands or thouſand tyes.

Or have put the excellent and almoſt Chriſtian (*t*) *Seneca* out of his temper, when in thoſe more honeſt dayes even amongſt the Heathen, he took it to be a derogation to the faith or Credit of a man to Buy or Sell and contract upon Bond or writing *impreſſis ſignis* with putting their Seals to it before Witneſſes, *annulis plusquam animis credentes* truſting more to their Sealing Rings than their honeſties.

(*t*) Seneca *lib.* 2. *de beneficiis.*

And thoſe Apoſtolical Chamber Bonds were ſo little approved by their own *Galeſius*, as he upon the Queſtion *deceat ne inter bonos viros tam arctæ Obligationis vinculis tot adhibitis cautelis uti?* whether amongſt good men there ought to be ſo ſtrict a kind of Bonds with ſo many Cautions reſolves and concludes it, *remota Conſuetudine publica* ſetting aſide the common uſe and Cuſtom of it, whether he

he be *confidendum*, to be truſted *qui talem flagitat a debitore obligationem ſive illum qui ita ſe obligat in utroque videtur argui poſſe malitia*, who exacteth or requireth ſuch a Bond, or he which giveth it both ſeem to be guilty of naughtineſs. And our inquiſitors into all mens faults, but their own need not ſo cauſeleſly complain of our Laws (which in the years 1640 and 1641 they cried up, adored, and alleadged to be their *Birth-rights*, and the Soveraign *Antidotes* againſt arbitrary power) becauſe they cannot either do or inforce impoſſibilities, or cannot give a clear and infallible view and proſpect of all the borrowing and ſelling mens Eſtates, which multitudes, Millions and *Miryades*, of Accidents and Chances, which yearly, monthly, dayly, and in every minute and particle of time, do happen to all men and their Eſtates, a continual flux and reflux intermingling of the affairs of all mankind one with another, and the riſe and fall of Moneys, Rents, Commodities, Trade, Merchandizes, Lands and Eſtates will render, as impoſ-

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ſible, as to count and number the Bees of *Hybla*, the coming on of the Leaves of the Trees in Summer, and their fall or departure in Autumn, or how much of the Sea or Salt water, is ſent out into its every twelues hours Tides, or flowings into the Land or freſh waters, and how much of the freſh Retorns back again, or are mingled with it, or make it their factious and ignorant buſineſs to declaim againſt the practiſe of our Laws, (which they do not underſtand) becauſe it ſacrifices not the Innocent to the oppreſſing mighty *Nymrods*, or contradicts their unjuſt deſires or Intereſt, and in the ſlanders and calumnies they they would caſt upon our Laws, do but reproch them with what they could not hinder, when they were either manacled or abuſed by the late ever to be deteſted rebellion, and times of confuſion.

CHAP. XXVIII.

That the many complaints which they now raiſe and make againſt our Laws, were by themſelves bred and occaſioned in the late horrid rebellion, times of uſurpation, and abuſe of authority.

WHen the pious and carefull Shepherd of our *Iſrael*, was hunted and perſecuted until he was murthered, the Woolves were made the guardians of the Sheep, the Law dwelt in the Tents of *Meſech* and *Kedar*, and *lay amongſt the Pots*. Monarchy was baniſhed, all our Laws ſupporting it ſilenced a fictions republick, contrary to our fundamental Laws, erected with an Ænigmatical Title of the Keepers of the Liberties of *England*, by a feigned Authority of Parliament, without Name, Election and Suffrage of the people, and ſo miſtical and inviſible as it could never be known who they were, where to find them, or who

who created them: An engagement, ſubſcription or promiſe, enforced from all that would enjoy any place or Office in that ſo wickedly framed Republick, to obey and abide by their Government, *without King or houſe of Lords*, when by their impious League and Covenant with their *Scotiſh* confederates, they had been but a little before inforced upon pain of Sequeſtration and loſs of all Offices and Imployments in the Nation, to Swear to maintain the *Kings Perſon, Rights, Juriſdictions, Honour and Dignity*, and the *priviledges of both Houſes of Parliament*; the Kingdom was now to be plowed up, and a great gain expected, if they might have the Sowing and Crop of it, Wives were incouraged, and Shares given them to betray and cauſe their Husbands to be Sequeſtred, Servants their Maſters, and Children their Parents; many little Judicatories or Committees were erected wherein to act their Rapine, Pride and Ignorance, the Wives and Children of Loyal and Orthodox Miniſters, being by them ſeem-

ingly allowed a fifth part of the Profits of the Benifices; from which their Husbands and Parents were Sequestred for their Conscience and Loyalty, but when their hardly obtained Orders in any thing that did but savor of compassion were carried with them to their sub-Committees, contrary directions or intimations, or certain secret Marks and Comma's were written or sent, not to suffer those distressed people to have any benefit or dispatch thereof, but to delay, Tire and Starve them, and *Asinus ad lyram* every Tradesman or Country ignorant factious Farmer, thought he had wit enough to make a Committee man or Judge in that little Judicatory, and would sometimes complain that they should be either puzled in their designs or intentions, or over-borne with the reason of things; But howsoever kept themselves up, and received in the Harvest of that their spoil and rapine, until a Fanatick frenzy, so overacted the greatest part of the *overturners* of our Laws and Liberties, as they voted down the Courts of *Chancery*, *King's Bench*, *Com-*

Common-Pleas, and *Exchequer*, and nothing would please them but a mistaken rule of Scripture, and a pretended hypocritical shew of godliness, for the advance of the pleasure and profit of themselves, and their Pharisaical brethren who they called Saints at the same time, when they thought it to be a piece of Popery to give that Title to the blessed Apostles, who far better deserved it.

And put their *Oliver* and man of Sin, in mind of his advantage to pull some of those godly Members of Parliament out of their Nest or house of Parliament so called, and dissolve their usurped Authority, and take it upon himself in a single Person, our excellent *Magna Charta* (which as to the hearing and admitting every man to his defence before he should be condemned, had its Original and Pattern made and given by God himself in Paradise when he allowed *Adam* to plead for himself and that great and Omniscient Creator and Searcher of hearts, knew the Crime and manner of doing of it, as well as he that did it,) was by that

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Protector of an horrid rebellion called *Magna Farta*, the Lawyers that pleaded for it in the case of an *Habeas corpus*, brought by Mr. *Coney*, a Merchant imprisoned in the Tower of *London*, an high Court of miscalled Justice was erected to butcher those that should attempt the restauration of the King and his Laws by an arbitrary way of Trial without a Jury, because they would not give Verdicts against the Law and their Consciences; *an Instrument of Government* was procured to be made to maintain his arbitrary power, and an Army of 20000 Foot, and 10000 Dragoones, and a Formidable Navy at Sea, and that he and his privy Councel might approve or disapprove the Election of Parliament men of the House of Commons before their admittance, common Lawyers, and some that neither understood common or civil Law, were made Judges of the Courts for proving Wills and Testaments, as if ignorance and incapacities how to Judge or determine Causes or Matters or controversie, should be a sufficient

ficient guide or conduct unto the doing of Juſtice, a *blind man* might Judge of Colours, a Carpenter could by any rule of Prudence be imployed to make and not to ſpoil a Suit of Apparel, or a *Bricklayer* never brought up to any other trade could without danger of a ſick Perſon Officiate or Adminiſter Phiſick unto him as a Phiſitian or Apothecary, or as if the adminiſtration of Juſtice could attain to any thing more than an injuſtice by an *Antipodes* of Law or Knowledge, Spiritual pride, Folly and Fanatick Phancies with the gain of plunder and hopes of Dominion, were to all but ſuch as fled with *the Church into the Wilderneſs* become the only Religion, the celebration of Marriage appropriate unto the Clergy, and the rites of holy Church, was by an Act as they called it of Parliament, deveſted and taken from them and put into the Office of the Juſtices of Peace, whereby the Mothers were Whores and their Fathers Knaves and Fornicators, and the Children to be after born would have been

been Baſtards if the mercy and compaſſion of the King had not after his miraculous reſtauration. confirmed and made good by an Act of Parliament, thoſe unlawfull Marriages which had before given ſuch an ungodly liberty to thoſe people of the new light or *Devils dark Lanthorn*, as ſome could not mortify the fleſh, or reſiſt the Wiles of Satan without 2 or 3 Wives at a time in ſeveral places, others 10 and another 17

The Swine broke into the Garden of our excellently conſtituted Government and Laws, whilſt Monarchy remained amongſt us, and *rooted up the Lillies, and trampled upon the Beds of Spices* the *little Foxes* as well as the wild Boore would be doing, and rather than want their opportunities of Wickedneſs, would buſie themſelves in robbing one another of their Prey, and the Price of the blood of the Lords anointed, ſo that many of the firſt ſort of Rebels which hunted him, ſold their *debenture*, and wages of Iniquity to the ſecond ſort, who

who did help to ſlay him at 16 pence in th' Pound, beſides the advantage of a great deal of Intereſt to be allowed thereupon, and thoſe rewards of ſpoiling three Kingdoms, and waſhing them in Blood, making the Purchaſors rich by the gain of Rebellion and Sacriledge, every Mechanick thought himſelf a *Solon* or *Licurgus*, and the common Souldiers their *fellow Legiſlators*, taking their meaſures by their vulgar Capacities, aſſiſted with ignorance, factious Clamors and Pretences, troubled their Maſters and *Rabbies*, and filled the *Coffe-houſes*, with many a new fangled propoſition, and the Phanatick diſcourſes of a *Rota* and *Balloting* Box, for the alteration of Laws and Government, the Records and memorials of the Kingdom concerning the Juſtice and more eſpecial affairs thereof, which the Commons in Parliament, in the 46th year of the Reign of King *Edward* the third ſtiled the perpetual evidence of the people of *England*, were by *Hugh Peters* that *Booſſooly* Rebellious Preacher adviſed to be burnt, and that his wicked Councel ſo well (u) *Petitiones Parliamenti* 46 E. 3.

entertained as an Order was made (but happily prevented) to throw all the Records in the Treasury, and keeping ofthe *Chamberlains* of the *Exchequer*, and the Records in the Treasury of the *Kings Bench* into the River of *Thames*, special pleadings were destroyed and Issues in all Actions by a Clause darkly inserted in an Act of their miscalled Parliament, concerning Meal turned into a general Issue of not guilty proper, to Actions of trespass and made to be the Issue in all Actions whereby no man could know beforehand what was to be proved or verified at the Tryal of the Cause to the great delay and hindrance of those which were concerned in it, and extraordinary charge of witnesses, and innovation like the rage of many waters combined into a Torrent, assalted and broke down as much as they could of the Banks of our Laws and Liberties, whilst the weeping, deceitfull and devouring *Hiena* and the treacherous *Panther* beguiled and cheated a silly people of their Laws and Liberties, and made them in a needless and unfit

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ſeeking for Liberty, to looſe all that they had of Liberties, and betray themſelves and their Laws and Liberties unto an uſurped and Tyranical authority. Learning was accompted an Ethnick or Heathen, and reaſon no leſs than Antichriſtian the Illiterate Major Generals and ſome of them that were not altogether ſtrangers to Learning, ſcorned and domineered over the Law, forbad the juſt proceedings thereof, and mocked at the beauty of its reaſon and formalities, the Drunkards, as *David* once complained concerning himſelf made Songs of her and her Friends and Lovers ſtood a far off; an advanced Cobler was allowed to threaten to hang up the Lawyers Gowns in *Weſtminſter* Hall, as the Trophies of their Mechanick Conquering ignorance, and the *Inns of Court* were deſigned to be Garriſons or Brew-houſes, wherefore they that Idolized, and were ſo great Gainers by thoſe unhappy times, may do well to forbear their accuſations of our Laws, when they themſelves did put ſo many tricks upon them, and did

all they could to prostitute the Virgin Daughter of our *Syon*, which the wiser part of the World may believe ought to lie at the doors of those, who when the *good man*, the owner of the field was not a sleep but bound hand and foot, and abused by a prevailing Rebellion; Sowed the Tares of Innovation, Barbarism, Fraud and Villany in the affairs and proceedings thereof, which will require and busie an Age to weed out and extirpate, for want of a *Star Chamber*, and the awe and terror of a Soveraign King and his Laws, to bridle, inquire into and restrain the exorbitances and vice of the Nation, punish the Offenders, and discover their secret contrivances, with their Abettors, Maintainers, Partakers, Associates and Confederates, who did grow up like the devouring *Crocodiles* and *Pythons*, and multitudes of poisonous great and lesser Serpents, which the Slime and Mud of the Fertilizing *Nile* had at its drying up left behind it, to infest the Sun-burnt and Idolatrous *Egiptians* brought in upon our not long before

happiest

happieſt Nation of the Earth, and moſt free from Taxes, many great impoſitions and oppreſſions and introduced the Villanies and corruptions of an *Anarchye*, Suborning of Witneſſes, Forgeries, taking out or putting in words into Deeds or Evidences, or antidating of them, Imbezeling or burning of laſt Wills and Teſtaments or Evidences, making or procuring falſe Certificates, forging of Records, and putting them upon the file or laying them amongſt other Records, counterfeiting of Heirs or Children by making their ſuppoſed Mothers to ſeem to be with Child by wearing a Cuſhion or the like upon their Bellies, and buying a Beggers Child to be ſuppoſitiouſly taken from her in the time of her pretended Travil or Child-birth, cunning diſſeiſins, wrongfull and forcible Entries, couſening of Orphants, under Colour of Truſts dangerous, Practiſes, Witchcrafts and Sorceries, to compaſs or carry on unjuſt and ugly deſigns, putting a dead mans hand to a Will, and procuring Witneſſes to Swear he Subſcrib'd it, corruption

and

and embracery of Juries, forging of *Exchequer* Writs, and Proceſs for Money not at all due, extortion and illegal doings of under-Sheriffs, Bailiffs and Attorneys in Arreſting men upon Blank Warrants, without any Writs firſt had to Warrant the ſame Debts or *Debenturs* owing to the State (ſo ycliped) forged and counterfeited, and ſome for no leſſer a Sum than 20000 *l.* with Intereſt for many years to be reckoned for it, inſinuating or Birdlime kindneſs unto ſome old froward or ſolitary men, to procure a fat Executorſhip, to the ruine or defeating of the more juſt rights orexpectations of Wife, Children or Kindred, making lies, and counterfeiting Letters of falſe reports, to procure a Son who was towardly enough to be diſ-inherited by his Father, cauſing a Joynture to be made to a Wife, of another mans Land, Infants procured to levy Fines, and them to be paſſed, and the Silver paid ſome dayes after the death of the Cogniſor hiring of falſe Witneſſes to be

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at trials or hearing of Cauſes, to be ready when any as bad as themſelves ſhould have occaſion to Purchaſe their Perjuries, making, dreſſing up, and diſguiſing a Witneſs by ſeveral names and habits, to be examined at ſeveral times to ſeveral purpoſes, and pretences hating and falling out with ſuch as ſhould Swear a truth againſt them, or will not falſly Swear for them, turning away of Servants for adhearing unto their Conſciences and diſgracefully putting away without maintenance or relief a vertuous Wife, and declare three of her younger Children to be illegitimate upon a Phanatick Jealouſie, that an *Angel of God*, and at an other time the *holy Ghoſt*, had revealed unto him that ſhe was unchaſt, and had committed Adultery, and thoſe groſs Iniquities and Follies committed at the ſame time when he pretended to lye low as a Chriſtian, and dreamed that he was *above Ordinances*, Witneſſes cauſed to be abſent by Arreſting them upon falſe or pretended Actions, or by gifts or other indirect means, or a deluding

ding or carrying them to a wrong Court or ſtealing away their time in a Tavern or Alehouſe, teaching ſilly Witneſſes what to ſwear, and carrying a Paper to which they were beforehand prompted to an Examiner in *Chancery* to ſet down their depoſitions by it, a party in a Suit in that Court, putting himſelf into a diſguiſe, and cauſing himſelf by a wrong name to be examined in his own Cauſe, which had paſſed for current, if the care of the Examiner had not hindred it, the greateſt pretenders to Integrity, and a righteouſneſs neither to be *ſeen*, *felt*, *heard* or *underſtood*, could rejoyce at the ſight of an extraordinary bribe or preſent as big as 4 or 500 *l.* receive it and do nothing for it, and the ſowreſt of their *Areopagites* ſtitched and bound up in a great deal of zeal and ſincerity, as they Imagined thought it no violation or aſſault upon their form of Godlineſs, if they took 500 *l.* or 1000 *l.* at a time, and could notwithſtanding bring their longing avarice to ſo excellent a temper and ſelf denial, as to reſtore it again if their *Mephoſtophilus*

or diligent Devil, could not fetch or carry the deſign.

Amongſt the moſt buſie *Reformers* and *Propoſition-mungers*, and thoſe who have been moſt clamorous againſt the Law, one may be named, who in a peviſh and oppreſſive Cauſe or Action, did in leſs than three quarters of a year ſo multiply Actions and Troubles againſt a poor Tormented Defendant, as he was *fifteen times* Arreſted, or had in that time as many Actions brought againſt him, ſome whereof coming to Tryal, the Reformer would never be perſwaded to be quiet until the fear of being Indicted for a *common Barrator* did put him into a more peaceable humour.

Another whilſt he buſied himſelf in transforming the *Monarchy* of *England* into a profuſe and unbounded *Anarchy*, could in his Libertiniſm and Hypocriſy retain ſo much of the Devil in him, as to Mortgage one parcel of Land for conſiderable Sums of Money, *five times* over to five ſeveral Perſons.

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And a Grandee of the reforming party to make good an unjuſt Verdict, and protect it from being ſhaken by a Writ of Error, could think his time and Intereſt well be ſhewed to ſolicite & ſuddainly and Clandeſtinely by the means of a confederated Party, obtain an Act of Parliament to be made to take away all Writs of Error after Verdict, and being afterwards troubled with learned Judges, which could not tune their Opinions to his Intereſt, was the cauſe of putting that buſineſs which he had before and all Matters of that Nature into the Cognisance of a Committee, made up of Tradeſmen and Country Gentlemen, whoſe ſmall affection and intentions to do Juſtice, was leſs than their Knowledge, Skill and Method was to do it, and was ſo, fixed to the opinion of the Juſtice of his Cauſe, as when after ſeveral Tryals and Strugglings he might have been convinced by the Oaths of a Jury and the Judgment of learned and able Judges thereupon, and that it had been more Conſcience and Juſtice to have recompenced his adverſary

verſary for his Damages ſuſtained by ſuch a vexatious moleſtation, was ſo unwilling notwithſtanding to abandon his Fancy and unjuſt pretences, as he openly profeſſed in the Court that he would not acquieſce but Intail that piece of contention upon his Heir, and when ſuch Overſeers and Reformers of others more than themſelves, ſhall happen to meet with their faces in this Glaſs, may ſpare me the trouble of naming them, and follow ſo much (if they will no more) of our Saviours counſel to as ſeeming a Company of Righteous men, firſt to take the Beam out of their own Eyes, before they make ſuch a Hue and Cry after the Motes in the Eyes of thoſe which practiſe a great deal more and pretend leſs than they do, who for ought yet appears are ſo imployed in finding out other mens faults, as they are ſure to commit too many and more than enough of their own.

And ſome of the Gentlewomen and Ladies of thoſe Times, being willing to be as little alſo as they could behind

thoſe that would turn the Law into a Trade or *Machaniciſme* or faſhion of *Truck* or *Dealing* would be ſure not only to intermingle their Arts and Stratagems in *Trapanning*, but undertake where they could meet with any fooliſh people that would believe them to Warrant the ſucceſs of Suits and Actions at Law by the making of Friends, though they neither knew how to come at or ſpeak with the Judges.

Would come and make falſe Meſſages take and receive great Sums of Money, preſents or rewards when they did nothing or little to the purpoſe to deſerve it, and the *Quakers* or ſome Captains or men of that Gang or perſwaſion, who pretended to be altogether dedicated to Truth, Holineſs, and Simplicity of Heart, and to have a *Light* within them which conducted their Fanatick Conſciences, were ſo unwilling to be lookers on only at that Game or Trade, which was grown to be ſo profitable and faſhionable as they could alſo be dealers in unjuſt Cauſes, and labour all they could

could to miſlead Juſtice by untrue and ill grounded pretences, and make the Law to be guilty of biaſed Arbitrarines, when as the ſame time without any ground or reaſon at all they could exerciſe their Folly, Raſhnes, and Ignorance as well as their uncharitableneſs in railing upon it.

Which being in that *Chaos* of Government not able either to protect it ſelf or ſuppreſs thoſe ſo many *Harpies* and Dealers, and the product of their ungodly and illegal Tricks not known to our former and more regular Times, to hang about and foul all that was upon the *Tables of Juſtice* or give a ſtop to the Swelling up the *Summa Totalis* of many Bills of Law charges, into vaſt Sums of Money, and reckonings of Hundreds and Thouſand pounds ſpent in a Suit, when as a Tenth at moſt or a Twentieth or a fifteenth part, would moſt commonly defray it, and begot a reckoning of 1500 *l.* pretended to be ſpent in a Suit in *Chancery*, which depended ſome years concerning a Ship loſt or ſunk at

Sea, which upon examination could not make appear that not much above 20*l.* thereof was expended in the Six Clerks Office where the Fees of the Bill or Bills, Answers, Pleadings, Depositions taken by Commissioners, and the one half of the proceedings thereof were paid and disbursed.

Most of the Mony spent in such *Timpanied* reckonings which did so loudly lift up their voices against the Law if duly and industriously examined & inspected, would appear to have been occasioned by often great and luxurious costly Dinners or Suppers, and Treats in Taverns, where *Conjurers* or *Contrivers* in the Suits at Law were to assemble their plots and devices, how to waylay mischief or Murder a Truth, or scandalise delay, or ruine the Innocent, especially if they were of the oppressed Kings Loyal party whom they accompted to be as the Children of *Moab* and *Amalek*, not deserving either Justice or Compassion, and like the *Egyptians*, might have their Jewels borrowed or taken from them until their

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new light and Conſcience ſhould perſwade the reſtoring of them, and could tell how to reckon for the making uſe of Friends, defraying of Gifts, or inſinuating preſents or gratuities, Rewards, Journies, loſs of time and neglect of other buſineſs, &c.

The Orthodox ſequeſtred Miniſters were forbid by a Proclamation to Sue for their Benifices, out of which they were illegally ejected upon the penalty of loofing the fifth part thereof allowed to their Wives and Children which by tricks were all or the moſt part withholden from them) and all Lawyers and Attornies forbidden to aid or aſſiſt them in the proſecution thereof.

Many men turned out of their Poſſeſſions without due Proceſs of Law, by a new Trick or invention of a feigned Ejector, who by compact with the Plaintiff and confederacy, was to ſuffer a Judgment by default, if the right owner would not upon a ſuddain and ſhort warning when he is many times ſtreightned in time for want of his Evidences and Witneſſes

neſſes, confeſs *Leaſe*, *Ouſter* and *Entry*, and abandon all the juſt advantages which the Law will give him, and conſent to a ſpeedy Tryal.

The Earls, Barons and Nobility of the Kingdom ware contrary to the Law, Arreſted and Impriſoned as common Perſons, and an Officer of the Court of *Common Pleas* refuſing to make Writs and Proceſs of Arreſt againſt them, checked and threatned to be pulled of of his Office by Souldiers or *Redcoats*. champarty and maintenance let loole, few or no Debts or Cauſes of value, proſecuted by Attorneys or Solicitors without factorage or a great ſhare or part thereof.

The Laws muſt be pretended to be defective in the Diſcovery of Incumbrances charged upon Lands that were to be Sold or Mortgaged, when they themſelves were the greateſt *Incumbrances*, and therefore an often in better times, exploded project of an Office of *general remembrance* or *Regiſtration* to inſpect or certifie every mans Eſtate and Debts

owing

or owed with all its ſequel of ſecurities, as Bonds, Bills, Statutes or Recognizances, &c. A deſign very uſefull for thoſe that intended to ſaddle the *Engliſh Aſſe*, and load her with Taxes and Aſſeſſements *in ſæcula ſæculorum* to the utmoſt end of their Dominion, or to make a Rod or *Rack* for any which in that their time of Plunder or ſequeſtration either had or ſhould be ſo bold thereafter, as to adventure themſelves and their Eſtates for *Monarchy* and *Loyalty*, and to diſcover, decimate or reſequeſter any ſuch diſtreſſed mens Eſtates, which in ſuch or after times of perſecution for *Loyalty*, ſhould be hid or concealed.

Our greater Courts were to be cut into ſeveral *Cantons*, and our Laws that were hated for aſſerting *Monarchy* and Regality, muſt like *Adonibezek*, have their Fingers and great Toes cut off, and one of our *Reformers miſtaken wrong ſides* of reaſon given for it, muſt be forſooth that ſuch a *perſpective* or Regiſtration would hinder or leſſen contentions and expenſive Suits and Troubles in Law or Judg. 1. 6, 7.

Equity, and take away much of the Causes, or occasions thereof, when a lamentable experience hath told us what a fertility of Suits and busines for Lawyers and Solicitors, the *Oliver* times of pretended Reformation brought upon the people by the *Committees* and *Sub-Committees* in every County and City, and how that a Clerk and a Desk and some Quires or *Reams* of Paper, and a Barre quickly made a little Court or Judicatory to breath and exercise the younger sort of Lawyers, and the factoring Solicitors and men of Feats and Contrivances, and that there was in Ten years more spent in their Orders which could not be had without 10 or 20 times the Fees of the Orders of our courts of Justice in their *Committee*, partial and Biased Decrees and adjudications, than hath been spent in our more legal and better established Courts of Justice Forty years before.

The Ancient and well approved necessary and legal forms in the Courts of Justice and proceedings thereof, were to be transformed and put into a dress of

their

their Imall Intellectuals & as they thought inspired making, and the Courts of Justice & their Proces model'd and made to be their Lacquies into the Land of *Canaan*, and the Blaſe muſt be clapt on the ſide of the Plaintiffs and monyed men, and all the favour which was to be afforded to the Defendants, muſt be to ſend them a *Peremtory Summons* and a Declaration at the ſame time, and if they were not at home, affix it upon the ſtreet door, and give them like *Amorites* as little time of reſpiration, or making their defence as could be for denyng the beloved Children as they called them of the moſt high their paſſage into the Land of Promiſe and Plunder, which if not within a few dayes obeyed, Judgment and Execution thereupon for not appearing, were like *Jehu* furiouſly to march after.

The *Arcana Imperii* were thrown into the mire and filth of the Ignorant multitude, every factious and *rough handed* Mechanick Committe man had the Scepter or ſo much as would ſerve his turn to Tyranyze with all.

And the curious and well made *Watch of State*, and director of Times and Seasons, was put into the hands of such as knew not the motions, and exact order of the greater and lesser wheeles of it, nor how to wind it up or keep or set it, but was as fondly and rudely handled, as if it had been in the manage and fingering of the most *sordid Coblers*, dirt raking *Scavingers* or *Chimney Sweepers*, the policies and former Actions of State so mistaken, *Fooled* or *Knaved* away, as made our Nation almost loose, the guidance of the *Ballance* of Christendome, and the Chariot of our *English* Sun, (which the Lord Keeper *Finch* in his Speech in Parliament the third day of *November* 1640. gave a caution (and too prophetically foretold the danger of doing otherwise, to look better unto it) being climbed up by a factious part of the people was so driven and misguided as a long lasting War, and our miseries have taught us to bewail the blacking of this Nation by a Reproch of a strange and long carried on Rebellion against him that better

better guided it, and great Sums of Money must be borrowed by that *Empusa* or Witch called the publick Faith upon a pretence of preserving the Kings Person and Authority, and the Laws and Religion of the Kingdom, when the design and use of it was to destroy them, who, when most of the other parts of the Christian world were harassed and spoiled by Wars, kept us in an envied Peace and Plenty, sitting under our own Vines.

So as instead of Mercy, Truth and Peace, Kissing each other; Rebellion, ungodly Gain and a Cursed Ambition embraced each other; Confusion in the Civil Estate, and Confusion in the Spiritual; Madness in that which was called the State, and a Madness in the *blew apron'd Ministry*, and that which called it self a Church, had made a League offensive and defensive against all that were for God and the King, and all that wished well unto *Sion*, or were owners or proprietors of any honesty Learning or Reason.

All

All which with the many more Whimsies and Abortions of their over meddling giddy incapacities accompanied with many their Artifices and undermynings to furnish themselves and their Ignorant admirers, with Offices, places, and profitable imployments, and make the people willing to be cheated with pretences of reformation, were so horridly strange and numerous as I may with a little Addition, say as the Poet *Virgil* did long ago in another Case.

Virgil *lib.* 6. *Æneid.* *Non mihi si linguæ Centum oraque Centum, Ferrea vox omnes scelerum comprendere formas.*

An hundred Tongues will not suffice to tell,
The loathsomness of *Hamrhes* dark Cel,
Where Toads and Snakes and all their venemous rout,
To wonder multiplied, did crawl about.

Which

Which the Law like the weeping Prophet *Jeremy* drawn out of the Dungion by his now Majesties happy Restauration being not before able to hinder, is not now to be mooted with, or blamed when it will appear to such as know it, not to be an impostor, not to be too strict, or loose equivocal or arbitrary, nor as the *Hebrew* Language, carrying the sence by Addition of Letters or *Masoretical* points, prefixes or affixes, but according to the genuine and plain sence and meaning of the words connatural unto them, the True intent meaning and reason of the Law and the makers thereof, without obscurity or making use of any *Ellipsis*, or crooked or collateral Construction, any Allegories, Tropes or figures which might darken or misguide the true interpretation thereof, have not in them any pravity or inclination to injustice, nor are destructive to the ends thereof, or the good or well being of the people, but are drawn *Limbecked* or distilled out of what was laudable and usefull in the Laws of Nature and Nations,

and

and the civil Law, the experience and wiſdom of former Ages, and what the *days of old* have told us by approved and aſſented unto univerſal and uncontroled maximes and principles into a *quinteſcence* of perfection or excellency of right reaſon, and are not tedious chargeable or dilatory in their Proceſs or proceedings, nor barren or defective in their remedies, and if well executed, (humane Errors *in minimis & raro contingentibus* in matters of ſmall moment, or ſeldom happening only excepted) by the right uſe thereof in the peoples obſerving and obeying them, the application of thoſe fit remedies which they have provided, and the ſubordinate Magiſtrates care to ſee them duly put in Execution, would evidence and manifeſt themſelves to be moſt agreeable to the juſt and righteous Laws of God, the wiſeſt and moſt foreſeing Legiſlator moſt conſonant to the Rules of his Mercy and Equity, and far excelling the Laws of all the Nations of the World, either Chriſtian or Hea-Heathen.

Which

Which might perſwade our *Tradeſmen* and buſie Reformers, to keep within the compaſs of their own Orbs, and not to ſeek to magnifie or exalt their Ignorance, and that they might better imploy their time in Petitioning the King to Grant ſome Acts of Parliament, to prevent and puniſh Combinations, Confederacies, *By-Laws*, and Tricks of Trade, ingroſſings and foreſtallings, Adulterations of all things made or Sold and the Enhance thereof, fraudulent breakings or bankruptings, and Compoſitions which are Ten for One to every parcel of Land, which do happen to be more than once Mortgaged, the former not diſcharged.

And think that their Majors and Magiſtrates will never be able to render a good accompt of their Oaths eitheir in *foro ſoli* or in *foro poli* in this World or the next, of Conniving, Incouraging or permitting of Cheats in Trade, till they are now become to be as Confeſſed and notorious as their Signs are to direct their Cuſtomers, and to ſuffer

our Bread to be made small and little as if the Price of Wheat was 10 or 12 s. a Bushel, when it is but at 4 or 5, our Drink sold by the Brewers, small, half Boyled, unwholsome, and false measured, and our Wines strangely and wickedly adulterated with *Arsenick*, if Reports be true, and other noxious and dangerous Sophistications.

That to talk of Conscience, and practise none of it, and to excuse their Sins by saying or thinking *they must Live per fas* or *nefas*, it is no matter whether by right or wrong, it is *their Trade or Calling*, their *Masters or Fathers did it before them, and that if they did not so others would do it*, may bring them to such a Salvation or State in the Life Immortal, as the adored *Diana* of the *Ephesians* would have brought her *Silver Smiths* or Shrine makers unto.

And be so wise as to believe that where there is a want of Credit and money, Land will not be Dearer but Cheaper, which makes it to be now but at 15 or 16 years Purchase, and that the abuse of

things

things was never yet held by any of the Sons or Daughters of men (children, Fools and Madfolk only excepted) to be any Cauſe or Reaſon of taking away the right uſe of them, for ſo our Food, Wine, Women, and every thing conducing to the well being of Mankind, or the *Microcoſme* of it muſt be forſaken and aboliſh'd, that it ſhould be confeſſed that the Winds, Rains, Froſts, Colds, Heats, and Thunders of the Summer, and Winter, are not a little neceſſary in the *Macrocoſm* or Gods divine Providence, although ſome particulars have ſuffered, whilſt the general Good was taken care of.

That many or the moſt of the Suits in Law or Equity, are cauſed by ſome unquietneſs of Spirit or impatience, too much of careleſneſs or truſt, overhaſtineſs, overeagerneſs, ſome deceits or working upon neceſſities, ſome injuſtice, folly or Knavery, oppreſſion, evil deſigns, over reaching or denying right in one of the Parties, if not peeviſhneſs and heat of contention in both, that all or moſt of the Errors, Intrigues, Tricks, Blinds, delays, Ravels or Fogs therein, which do not ſeldome trouble or perplex the moſt carefull and wary Judges, are purpoſely or

casually made or contrived by one if not both of the parties, their Advocates, Attorneys or Solicitors, and that all that which the Justice of the Law or integrity of the Judges can do in the procedure or consequence thereof, cannot in the end keep the loosers from an unjust murmur, complaint or pretence of greivance, and that a particular few or seldome hapning Inconveniences, will not be enough to ballance or recompence a multitude, and an universal daily and continued flux of Evils and Mischeifs.

Wherefore when our Miseries so long and so much endured by the absence, alteration, disuse and misusage of our Laws, may enough and more than enough, assure us that an hidious number of mischiefs and Inconveniences do never fail to accompany any Innovations or change thereof, & more especially in Fundamentals, we may not only give thanks to Almighty God for his Mercy so abundantly shewed to our sinfull *English* Nation, in restoring unto us our King and the *Ark of God*, our Religion and Laws, wherein our Liberties do reside, and whereby they are supported and sustained.

CHAP.

CHAP. XXIX.

That we ſhould give thanks to God for the reſtoring of our Laws, and not be weary of that happineſs or deſire to change them.

BUt conſider that all the people of *Iſrael* did not do ill, when with their holy and Religious King (*w*) *David*, they brought home the *Ark* of God with *Shouting, and with the ſound of the Trumpet*, and that it was good Councel that *Solomon* (x) gave to *fear the Lord and the King, and not meddle with them that are given to change, for their Calamity ſhall ariſe ſodainly, and who knoweth the ruine of them both?* And although too much of the vanities of our Nation can imploy a Committee of Taylors to be ſent yearly into *France* to Purchaſe all the Apish and Muncky Faſhions in the Apparel and Mode of that People, to adorn and ſet out our follies, yet we need not be ſo inconſtant

(*w*) 2 Sam. 6. v. 25.

(*x*) Prov. 24. v. 21, 22.

ſtant to our Laws, as to put them to the trouble of following the Fashions or the Fancy of every Botcher.

For if they were in the year 1641. ſo highly eſteemed by the now Reformers themſelves, as they entred into a proteſtation, and within 2 years after into a ſolemne League and Covenant, made rather than fail without Authority to maintain and defend them, and puniſh and ſequeſter thoſe who refuſed to do it, and ſome years after in a Declaration of their miſcalled Parliament could aver them to be the beſt Laws in the World; they ſhould do well, to inform us and themſelves, wherein or whereby they have ſince forfeited that their former high Opinion and Care of them, or wherein they have demerited more than ſuffer againſt their will and when they could not help it, thoſe ſhames and outrages committed againſt them by thoſe that would be the *Refiners* of *Wiſdom*, when they never had any.

And our Laws were ſo pretious in the days of King *Edward* the *Confeſſor*, when they

they were in their Infancy, and were not grown up as they have been since to that never to be despised Treasure & Riches of Reason they have by time and experience now attained unto, were so greatly valued, as when the fury and rapine of the *Norman* Conquest, broke in upon our *Saxon* Ancestors. They hid them under the high Altar or Shrine of St. *Edward* the Confessor their late King, and did afterwards *Fletibus & Precibus* with Prayers and Tears, assisted by many of the *Normans*, which helped to Conquer them, not desist until they had obtained an allowance or ratification of them.

So that it was not for nothing or without a Cause that the Earls and Barons of *England* did in a Parliament, in the Twentieth year of the Reign of King *Henry* the 3d. deny to admit of so much of the *Canon* Law, as made the Children Born before Marriage to be legitimate by a subsequent Marriage, and *una voce* without the least dissenting, stoutly & Magnanimously to resolve, *quod noluerunt leges Angliæ mutare* that they would not change the Laws

of

of *England*, which then had not near arrived to that perfection which they have since gained, and that in the Parliament, in the Eleventh year of the Reign of King *Richard* the Second in the Cause and appeal of *Thomas* Duke of *Gloucester* and others against *Robert de Vere* Duke of *Ireland*, the Earl of *Suffolk*, and others they denyed to proceed to Judgment thereupon according to the Law civil, but declared *que le roialme di Engle terre n'estoit devant ces heures ne al entent du Roy & Seignioure de Parlement unques ne serra rule ne governe per le Ley Civil*, (y) that the Realm of *England* was not heretofore, nor was it the intent of the Parliament that it should ever be governed by the Civil Law, and our Ancestors more than what they Retained of the Actions, Rules and directions of Reason, which that excellent Law afforded, and was necessary for their Ecclesiastical Courts, and the Admiralty and Commerce, and Correspondence with Forreign Nations, would neither before or since ever allow her under

(y) 11 R. 2. in Rot. Proces & judic. contre le Duc. d'Irland & autres.

under any other notion than as a Forreigner, over whom our Courts of common Law always kept a constant watch, and made their prohibitions to be as a guard upon their Frontires to repel their excursions, or going out of the bounds or limitations of it.

And as our learned *Selden* hath observed *adhæsione constanti & pertinaci ac singulari æstimatione gentis hujus Genio ab intima antiquitate adoptata* (z) by a constant perseverance and affection, would not be drawn from that singular reverence and esteem which they had of the common Law which so long a course of time and antiquity had fitted to their nature, and *Genius*.

(z) *Selden dissert. ad Fletam. c. 9.*

William Pole Duke of *Suffolk*, was in the Reign of (a) *Henry* the sixth accused amongst other things by the Commons in Parliament, that he had sought to introduce the civil Laws.

(a) 28 H. 6. m. 19. & *abinde usque* m. 47.

And that great Cardinal *Wolsey* was in the height of his Honours and favours indicted or informed against, in the Court of the *Kings-Bench*, (b) *quod ipse intendens*

(b) Trin. 23 H 8. *coram Rege* rot. 14

tendens finaliter antiquissimas Angliæ leges penitus subvertere & everspare in universum & hoc regnum Angliæ & eandem Regni populum legibus imperialibus vulgo dictis legibus civilibus & earundem legum sanctionibus subjugare & subducere, had endeavoured utterly to subvert the most Ancient Laws of *England*, and to subject the Realm of *England* and people thereof to the Imperial, commonly called the civil Laws, and to the Rules and Canons thereof.

And King *James* coming from a Nation where the civil Law was so much in use and might possibly have some inclination or thoughts to introduce or intermingle some part of it, (as *William* the Conquerer had to bring in the *Norman* and *Danish* Laws) did notwithstanding forbear to do it, concluding and confessing that (a) *the civil law was no fit law applicable for this government.*

(a) King James his Speech in the Star-Chamber.

And some Forreign Customs from *Florence* and other parts beyond the Seas, as the regulation of Weights and Measures, paying six Pence to the King for

Sealing

Seating of every one, and the like unto Places to be set in our more happy Island, being afterwards transmitted and offered to him by Sir *Robert Dudley*, he did in great indignation when they were presented unto him by the Earl of *Somerset* his then great favourite, after a little reading of it, throw the Book or Paper of them into the fire, which being rescued and snatched out by the Earl of *Somerset*; and some years after creeping out of his broken and forlorn papers into the light, and gotten into some hands who did only for curiosity, and enlargement of their knowledg desire to see them, a Bill was about the fifth year of the Reign of his Son the late King *Charles* the *Martyr*, by the Kings special direction exhibited in the *Star-Chamber* by Sir *Robert Heath* his then Attorney General, assisted by Sir *Richard Shelton* his then Solicitor General, *Davenport Barkley*, and *Heritage Pilch* his Serjeants at Law, and Sir *Thomas Crew* against the late *John* Earl of Clare, our very learned *Selden*, Mr. *Oliver St. John* and others, for the only having

(a) Being his Speech in the Star-Chamber.

and reading of them, wherein it was called a Seditious and Pestilent discourse raising fears and Jealousies in the minds of the people, as if the King had a purpose to alter and innovate the Ancient Laws, manner and frame of the Kingdom, and the Venome thereof come to be dispersed, nor was it also without some Cause or reason why, about the 19th year of the Reign of King *James*, that great Lawyer Mr. *Noye*, gave a stop for some time to that Project of general Remembrancer or Registration in the *Eurbrio* or beginning of it, prosecuted by some of that Kings Servants, as namely, Sir *Gilbert Houghton*, and Sir *John Finnet*, by giving his Opinion against it in these Words: *viz. I do think that it is not fit to desire any grant for the erection of such an Office, for that besides the charge, there may grow some prejudice to divers, that make lawfull Assurances, and yet would not have them published: and although it should be granted, there is no means to compel men to Enroll them there, neither were it fit to force men to Enroll their*

 Assurances

Assurances that were otherwise of Record.

Wherein those that afterwards did revive and drive on that design in the time of *Cromwell* Impostures, did not deal so candidly or sincerely as they ought, when it plainly appears by Mr. *Noyes* Opinion subscribed to the Case put unto him, that where he saith *I think it not fit*, the word or negative (*not*) doth manifest or shew it self to have been visibly misused and endeavoured to be blotted out, for that all the words and sense after it, do declare that the word (*not*) was originally not so abused or assayed to be obliterated, when Mr. *Noy* subscribed and did put his hand thereunto, and that the design of Registring in every County, though at first laid no wider, or to take in any more than Deeds, Conveiances, Judgments, Recognizance and Decrees, hath undone and tyred so many Adorers and Prosecuters of it, and Troubling some of the Parliaments of King *James*, and also King *Charles* the *Martyr*, could never yet sing a *Requiem* to its restless endeavours of undermining our Fundamental

Laws,

Laws, and Cancelling the unparalel'd Constitutions of the Monarchical Government of this Nation.

It being now high time to desist from an Industry as formerly to ruine and undo our selves by thinking to be wise when it hath appeared we were most foolish, when it will certainly be the Interest of the Nation to hate Innovation and take a greater care to preserve and give a due respect unto our Laws, and Leave the *Dutch*, *French*, *Spanish* and *Scottish*, or Foreign Laws to their Native Soils, Constitutions and Ways of Government, and their repose in their *Lits de Justice* Beds of Justice, and a self-conceited opinion thereof, and not to hearken to the *Syren* Songs of those, whose self ends and hopes of Gain by an alteration of Laws, Plowing and turning up of mens Estates, can in the hopes thereof be well content to exchange Certainties for uncertainties, Justice for injustice, Credit for discredit, and the happiness of the Kingdom for Misery and Confusion.

And therefore when we may well

how

remember, how near *Oliver* and his *Gallick Reformers*, with some Jesuits mingled in their levelling and pretended reforming Practises, had arrived unto the designs of *Parsons* the *English* Jesuite, in his memorial written at *Sevil* in the year 1596. and *Courzen* the *Moguntine* Jesuite in the second Book of his Politicks, and advised also by *Campanella*, that our grand Charter *be burnt, the manner of holding in Fee or Fee Tail, or Knight Service, wholly abolished the municipal Laws abrogated, and the Inns of Court converted to some other use*, &c. we ought to take heed that in such a Carreer of Novelties, Phancies, and an Imaginary sublimate Wisdom, we do not run into the Net or Snares prepared for us by our Adversaries of the Church of *Rome*, nor hasten or make it our business to Purchase that *Oliver*-relick of Registration, or the Wares and Commodities of a *Pandoras* Box, which will cleave as fast unto us as *Nessus* Poisoned Shirt, bring us as many Evils, Mischiefs, Inconveniences and Miseries, as the worst of our

Enimies could ever wish or desire to fall upon us.

Quæ procul a nobis flectat Deus ipse gubernans,
Et ratio potius quam res persuadeat ipsa.

FH
MVSEVM
BRITANNICVM

FINIS.